IDEAS ON LIBERTY

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FEATURES

5 Enlightened Altruism *by Richard W. Fulmer*

3 Is "Greed" Green? *by Pierre Desrochers*

3 The Pentagon Ramps Up the War on Privacy *by David M. Brown*

9 Going Postal *by Ted Roberts*

3 Tax Withholding: An Immodest Proposal *by Dale Haywood*

5 Homeland Security Circa AD 285 *by Harold B. Jones, Jr.*

2 Telemarketing and Individual Rights *by Scott McPherson*

5 The Dubious Blessing of EU Membership *by Karl Sigfrid*

7 Decommissioning California's Coastal Tyranny *by Steven Greenhut*

4 The Idiocy of "Smart Growth" *by Barry Loberfeld*

5 Germany: From the Market to Socialism—and Back? *by Norman Barry*

9 Neutrality Agreements: Bid for Union Power *by David Denholm*

Charles Babbage

Diocletian

COLUMNS

1 *IDEAS and CONSEQUENCES*—New Hope for Africa's Most Populous Nation *by Lawrence W. Reed*

11 *POTOMAC PRINCIPLES*—Lawyers Run Amok *by Doug Bandow*

30 *PERIPATETICS*—Who's Declaring War? *by Sheldon Richman*

42 *OUR ECONOMIC PAST*—How Politics Ruined the Northwest Salmon Fishery *by Robert Higgs*

51 *THOUGHTS on FREEDOM*—Possibilities vs. Reality *by Donald J. Boudreaux*

53 *THE PURSUIT of HAPPINESS*—America's Anti-Free-Speech Movement *by Walter E. Williams*

DEPARTMENTS

2 Perspective—Political Science *by Sheldon Richman*

4 Environment + Genes = Obesity? It Just Ain't So! *by Robert E. Wright*

53 Capital Letters

54 Book Reviews

Guns and Violence: The English Experience by Joyce Lee Malcolm, reviewed by Clayton Cramer; Vouchers Within Reason: A Child-Centered Approach to Education Reform by James G. Dwyer, reviewed by Cathy Duffy; Strikebreaking and Intimidation: Mercenaries and Masculinity in Twentieth-Century America by Stephen H. Norwood, reviewed by Charles W. Baird; Bias: A CBS Insider Exposes How the Media Distort the News by Bernard Goldberg, reviewed by John Hood; Locke, Jefferson and the Justices: Foundations and Failures of the U.S. Government by George M. Stephens, reviewed by George C. Leef; The Real Lincoln: A New Look at Abraham Lincoln, His Agenda, and an Unnecessary War by Thomas DiLorenzo, reviewed by John Majewski.

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PERSPECTIVE

Political Science

Richard Cobden, nineteenth-century Britain tireless advocate of peace and free trad pointed out that violence—the essence of th state—changes the very nature of a thin Just as forced religion isn't really religion, h said, so forced trade isn't really trade. Tha was his answer to the "free-trade imperia ists" of his time.

He could have added a third exampl science. At its best, science is the pursuit c the truth about physical reality. Its pract tioners should be fearless and relentless seek ers of the facts. If they are not, what's th point?

But science dominated by government i something different: a propaganda tool nc to be trusted. Too many people naïvel assume that if science in the abstract is objec tive, then government-sponsored scienc must be the same. Curiously, that principle i not extended to business-sponsored science A researcher whose work is funded by a cor poration is irredeemably tainted as a stooge Not so the scientist on a government grant A corporation may surely have an agenda but is that not also true for the current crop of politicians and bureaucrats?

Given a report on global warming, is i enough to know that the report was funded by a coal company or the Environmenta Protection Agency (EPA)? If catastrophic global warming is *not* occurring, a coal com pany would surely be interested in making that known—and EPA bureaucrats bent on messianic regulation might want to keep it quiet. As the Public Choice school reminds us, people are people, whether they work in the private (overt-profit) sector or the "pub lic" (covert-profit) sector.

We need not believe that bureaucrats will self-consciously lie about scientific research —although if businessmen can lie, why not bureaucrats? It may be instead that they let their anti-industrial bias shade their interpre tation of facts, sacrificing objectivity for advancement of an agenda.

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Everyone who sponsors and does scientific esearch is human, so the risk of bias is ever ›resent. That is precisely why it should be ›ff-limits to government. Free competition n the scientific marketplace is the best way o neutralize subjectivity, expose error, and ıpproach the truth. When government mpedes that competition quality suffers. Yet that is exactly what government does ·oday when it centralizes the research grant-naking process. It establishes orthodoxy, complete with protectionist white-coated ıigh priests. Dissenters are then stigmatized as "out of the mainstream" and find little or no money for their work. This happens routinely in medicine, nutrition, environmental science, and other areas.

If we just want the facts, let's separate lab and state.

* * *

If someone really set out seriously to look after the material needs of others, would he differ at all from an efficient, profit-seeking entrepreneur? Richard Fulmer wonders.

It's a mystery why environmentalists who think businessmen are greedy also think they wish to dump potential resources into the air and water. Pierre Desrochers shows that for years others have known better.

When a government agency aspires to possess total information about its citizens, is it time to worry? David Brown thinks so.

Trying to put in a good word for his mailman, Ted Roberts got another lesson in how bureaucracies operate.

What would be the best single way to impress on the taxpayers how burdensome government is? Dale Haywood has a candidate.

Another great and influential nation had a problem with homeland security almost two millenniums ago. There are lessons for America in the story, says Harold Jones.

Is there a way to evade the telemarketers' dinnertime phone calls without crying to government? Scott McPherson says there is.

Being a citizen of the European Union isn't sheer nirvana. Ask Karl Sigfrid.

Property owners won a big victory when the oppressive California Coastal Commission bit the sand. Steven Greenhut has an update.

If people and development are really the problem that the "Smart Growth" advocates say they are, then, Barry Loberfeld writes, it's time to get serious about ridding the environment of these blights.

Postwar West Germany, following free-market policies, achieved such prosperity that the economically illiterate dubbed it a miracle. According to Norman Barry, the real miracle would be if Germany prospered following its current statist course.

With private-sector union membership shrinking precipitously, those with a vested interest in it are turning to some dubious tactics. David Denholm explains.

In the columns department, Lawrence Reed reports on classical-liberal activity in Nigeria. Doug Bandow blows the whistle on a lawyer who undermines self-responsibility. Robert Higgs tells how the salmon industry was ruined in the Northwest. Donald Boudreaux warns that mere possibility is not a justification for state action. Walter Williams sees free speech under attack. And Robert Wright, confronting the averment that people aren't responsible for obesity, responds, "It Just Ain't So!"

Our reviewers this month devoured books on guns in England, school vouchers, the history of strikebreaking, media bias, John Locke, and Abraham Lincoln.

—SHELDON RICHMAN

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IDEAS ON LIBERTY
APRIL 2003

Environment + Genes = Obesity?

It Just Ain't So!

Many Americans are overweight, Ellen Ruppel Shell, author of *The Hungry Gene*, reminded *Los Angeles Times* readers last Thanksgiving Day ("Big Food Has Become a Big Problem: Politicians and Health Officials Must Address Pandemic Obesity"). Her solution? More government regulation.

Shell calls for government to regulate food advertising to children and to subsidize the production of fruits and vegetables, hoping to increase the quantity demanded by driving down the price. Following that logic, a prohibitive sin tax on sugar and fat would be certain to follow. In short, Shell calls on the state to use its coercive powers to force Americans to eat what she believes is healthy.

The problems with Shell's program are numerous and deep. For starters, she apparently has little understanding of political economy. The government has already tried prohibiting alcohol and other drugs, restricting advertising of alcohol and tobacco, imposing sin taxes, and subsidizing agriculture. The results have been mixed—at best. Success here appears even less likely.

Moreover, scientists still do not understand the relationship between diet, weight, and health. The low-fat, high-carbohydrate regime many pushed for years has not worked; some have finally begun to take a serious look at low-carb, high-protein, and high-fat alternatives, such as the Atkins diet. Similarly, the received wisdom about the alleged link between cholesterol and heart disease has come under increased criticism of late. The foundation of modern nutritional and health theory has been shaken and th entire edifice may soon tumble down. How ever, it may take many more years, eve decades, before we learn the Truth abou diet. In the meantime, if politicians follov Shell's advice, they may subsidize, tax, an restrict the wrong foods.

The biggest problem with Shell's article however, is her limited understanding o human behavior. She formulaically assert that "obesity is the consequence of environ ment acting on genetic inclination, and tha genetic predisposition combined with ar increasingly 'obesegenic' environmen underlies the current pandemic." Accordin to Shell, Americans are passive victims o two forces beyond their immediate control their genetic makeup and the "obesegenic" environment in which they live. American cannot change their genes, but they can with the help of Big Brother government, make the environment less conducive to obesity. That is old statist rhetoric with a bone thrown to genetic determinists. The missing element, of course, is human volition, good old free will.

You see, human beings are endowed with the wonderful ability to think, to reason, to make decisions for themselves. They must work within the constraints set by genetics and environment, but can pick from innumerable remaining possible choices. For instance, without the aid of technology, I am genetically incapable of flying or of burrowing very far into the earth. But I can choose whether to run, jog, skip, walk, crawl, or crabwalk to get around.

Similarly, I could not live on a diet composed entirely of mercury or of twigs, but there are vast combinations of foods in between that are *entirely under my control.* (As Shell notes, Americans are bombarded with food advertisements. But advertisers should not be able to rule us, and to the extent that they do, it is because the government's schools do an inadequate job of teaching critical thinking.)

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Americans need to know that in the vast majority of cases, *they decide* whether they will be overweight, just as they decide whether they will use tobacco, alcohol, or other drugs. But they have been given bad information on which to base their decisions. Blaming obesity on a "fat gene" or the alleged evils of "Big Food" will only exacerbate the problem by directing attention away from the main cause of the "pandemic," government meddling. This is yet another case of statists using *government failures* as excuses to call for yet more regulation. Instead of allowing Americans to make their own food choices, the government leveraged its control of the educational system and scientific establishment to inculcate impressible Americans with the notion that to be healthy they had to eat lots of starches and sugars and little fat or protein. That diet left Americans feeling hungry, so they loaded up on more bread, pasta, and starchy vegetables instead of the fat and protein their bodies needed and craved. We know the result.

Government Doesn't Know

So, at this point the last thing we need is more government intervention in our digestive systems. What is needed is the simple admission that scientists do not know everything about diet and that a little knowledge is a dangerous thing. Americans need to be told to forget everything they have "learned" about diet and health over the last few decades and to search out the diet that best suits their individual needs. A good place to start might be the various evolutionary diets like the *Dr. Atkins' New Diet Revolution*, *The Paleo Diet*, and *Neanderthin*. Such diets have the virtue of being based on the foods that humans thrived on for millions of years. From what we can gather from archeological and ethnographic evidence, our hunter-gatherer ancestors were fine physical specimens, neither gaunt nor obese.

Moreover, those who study ancient human diets make a number of interesting points that vitiate many of Shell's assumptions. For example, they note that today's fruits and vegetables have been domesticated to contain much higher levels of sugar and starch than their counterparts found in nature. Anyone who has ever tasted a "wild" apple will immediately appreciate that point. But again, scientists do not know much about the relationship between diet, weight, or health more generally. Our ancestral diet is a good place for modern Americans to start, but it may not be the place to end. The key point is that individuals should be encouraged to find what works best for them, as individuals. Al Roker and others who opted for stomach-staple surgery may have found that increasing their fat intake would have curbed their appetites and allowed them to lose weight and keep it off without resort to the staple gun.

That brings me to my final point. Clearly, there are a large number of competing economic interests at play here. Are stomach staplers and producers of diet drugs upset about our bulging waistlines? Do heart surgeons really want to reduce coronary heart disease? What about pharmaceutical companies? If a major study concluded that red meat is good for us after all, would pork suddenly become the "other red meat"? Do the left-leaning media really want to give Atkins and his followers full exposure? Does the government have an incentive to keep Americans fat and hence (seemingly) dependent on government entitlement programs like Medicare? Given all those conflicting economic interests, can Truth ever clearly emerge and enjoy wide dissemination? Yes, I believe, if government allows health-insurance companies to take the lead. Private insurers have both the resources and the incentives to discover and disseminate the Truth. They also have the power, through premium differentials, to induce Americans to listen.

—Robert E. Wright
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Author, *Wealth of Nations Rediscovered*

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IDEAS ON LIBERTY
APRIL 2003

Enlightened Altruism

by Richard W. Fulmer

Libertarians are awfully irritating. They keep talking about "enlightened self-interest," which is, both literally and figuratively, a self-centered phrase. Why don't they talk about "enlightened altruism," that is, doing the most good for the most people?

After all, there's a lot of need in the world. People need food, clothing, shelter, medicine—all the necessities of life. Why aren't libertarians talking about supplying those things to others instead of concentrating on themselves? Just take clothing, for instance. Why don't they talk about providing clothes to the poor rather than trying to profit from others' need to protect themselves from the elements?

I mean, I could give all my clothes away; that would help people. Well, okay, that wouldn't be very enlightened since if I didn't have any clothes, I couldn't go to work. No big deal, I'll just keep a few clothes for myself.

Well, if I gave only my clothes away, that would help only those people who are about my size and shape. And I don't really have that many clothes to begin with, so I couldn't help too many. Okay then, I could work to buy clothes of all shapes and sizes and give them away. Of course, I wouldn't really know how much of which type of clothes people need most. Also, I'd be buying clothes from profit-making companies, which would mean that I'd be paying too much for them. If I could get them cheaper, I could purchase more and help even more people.

I know! I'll make the clothes myself, and sell them at no profit. I'll just sell them for what it costs me to make them. Well, of course if I spend all my time making clothes, I'll have to quit my regular job. How am I going to feed, clothe, and shelter myself while I do all this good work? I'll have to sell the clothes for enough to live on. But that can't be very much, can it?

Let's see, I could get a cheap apartment for three hundred a month. Then there's food—probably another two hundred per month. Phone and utilities—maybe another hundred or so. Then I'd need a vehicle so that I can go and buy materials, deliver the clothes that I make, and all that. That's another two hundred a month in car payments. Need to add another hundred for car insurance. Finally, I'd have to buy a sewing machine, of course, and all the materials.

Wait a minute, zoning laws wouldn't allow me to run a business out of my apartment. Darn it! Maybe the libertarians are on to something when they oppose zoning laws. Okay, no problem; I can rent some cheap office/warehouse space for another three hundred a month. And throw in another hundred for utilities at the shop. Let's see, all that comes to about $1,500 a month.

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I wonder how many clothes I can make in a day. Well, if I decided to make blue jeans, then maybe a pair a day. I'd have to sell them for $50 a pair just to break even, and that's only if I worked every day of the month. Of course, I'd have to pay taxes too, so they'd probably cost more like $60 or even $70 a pair. That's more than even those money-grubbing factories charge for their jeans!

Factories. Hmm. Why not? I could build a factory. Then I could make my blue jeans very cheaply. And I could make lots of them, and help even more people. Not only that, but I'd be creating jobs at the same time. Great idea!

Let's see. I'll need to borrow a lot of money to build the factory—probably millions of dollars. I suppose I could get it from a bank, but then I'd have to pay all that interest. Not only that, but I'd be paying the interest to a big financial institution. Worse, they could sell my loan to some multinational corporation, and those guys are really evil, right? That's no good. Hey, what if I sold stock in the factory? That'd be good. Of course, I'd probably have to give the stockholders some sort of return on their investment, otherwise they wouldn't lend me the money. Okay, I could do that.

Paying Wages

You know, I just thought of something. I'd have to pay the workers in my factory enough for them to live on. If I built the factory here in the States, that means that they'd have to get at least $20,000 a year. Actually, I'd want to pay them more than the national average, which is about $29,000 a year. After all, I don't want to exploit anyone. Of course, Social Security, workers' compensation, health insurance, and all that stuff would probably make my cost per worker almost $40,000 a year. That's really going to drive up the price of my jeans, which means that fewer poor people will be able to afford them. I could build the factory somewhere overseas where the cost of living is a lot lower. That way, my jeans would be really affordable.

Wait a minute, this is crazy! I'd be acting just like one of those evil, multinational, profit-making corporations if I did all that! How can that be? I'd start out trying to do the most good for the most people—you know, enlightened altruism—and I'd end up acting just like someone would if they were only self-interested. That can't be right, can it?

Well, my motives would be different from theirs. That's important. I'd be acting out of concern for others, while they'd be acting out of concern for themselves. And they'd be competing with me, who only wants to do good, and nobody could tell the difference between us. There ought to be a law that only people with the right motives should be allowed to do business.

Well, that's no good. I mean, if people who want to make a profit act in the same way as someone who only wants to help others, then how would the police tell which is which? Also, you'd have to use force to keep people with the wrong motives from starting a business, and that's wrong.

Anyway, even if their motives aren't as pure as mine, they're still making clothes that people need, aren't they? Helping people is good. Isn't helping people still good if you do it for the wrong reasons? I guess so. Demanding that people all act out of the same motives as mine is pretty self-centered anyway, and that's what I've been complaining about all this time.

Funny, though. How could someone acting out of enlightened altruism end up doing the same things as someone acting out of enlightened self-interest? I think I'd better think this out again. □

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APRIL 2003

Is "Greed" Green?

by Pierre Desrochers

Devising prescriptions for "sustainable development" has made the fortune of a number of academics and consultants and provided a new *raison d'être* for countless bureaucracies. According to these "sustainability experts," since the dawn of the industrial age the goals of economic growth and enhanced environmental quality have been at odds. Traditional capitalism was characterized by a linear approach in which materials and energy were extracted, processed, used, and dumped into, through, and out of the economy. Pollution was the price to pay for increased economic expansion and employment, and as a result, business was doomed to a perpetual conflict with nature, regulators, and environmentalists.[1]

In recent years, however, this assumption has begun to give way. Leading corporations, we are told, have slowly discovered so-called "win-win" situations where cutting down on waste and finding creative new uses for industrial by-products have turned out to be good not only for the bottom line, but also for reducing polluting emissions. As it turns out, profits are good for the environment.

At this point one must pause and wonder. Haven't greed and the resulting search for profits always been viewed as one of the main engines of capitalist development? Could it be that greed has always been green?

Remarkably, many of our predecessors thought so and based this belief on a vast amount of evidence.[2] For instance, the polymath Charles Babbage, in his 1832 classic, *On the Economy of Machinery and Manufactures*, noticed that "amongst the causes which tend to the cheap production of any article, and which are connected with the employment of additional capital, may be mentioned, the care which is taken to prevent the absolute waste of any part of the raw material."[3]

Babbage's friend, the chemist Lyon Playfair, similarly observed in 1856: "The whole history of manufacture [is] but the using up of waste materials for a long time unrecognised by capital, but which ultimately [have] produced the most important benefits to mankind."[4]

Perhaps no author wrote more on the topic than a friend of Playfair, the journalist Peter Lund Simmonds. Although largely forgotten today, Simmonds was a journalist who wrote more than 25 books and countless articles on topics ranging from Arctic explorations to tropical agriculture, sea and animal products, and British commerce.

Simmonds's bestseller was his treatise *Waste Products and Undeveloped Substances*, which was first published in 1862 and which he updated thoroughly in 1873.[5] Although he presented himself as a "snapper-

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Charles Babbage

up of unconsidered trifles," his 400-plus-page book documents everything from the numerous profitable uses of bones, the acid manganese solutions of chloride of lime factories, the scoriae of metals produced by blast-furnaces, "injurious and even poisonous" gases that used to escape during the process of smelting, distillers' wash, blood, and old horseshoe nails, to name but a few items.

As he observed in 1862, "In every manufacturing process there is more or less waste of the raw material, which it is the province of others following after the original manufacturer to collect and utilize. This is done now, more or less, in almost every manufacture."[6]

Indeed, as he put it a few years later, "Utilisation is the great law of Nature, and we are only following her teaching. . . . She, true to herself, is never at a loss what to do with any of her elements. Man, in an artificial state of society, and in an enlightened age, also provides for converting all the material he uses into useful purposes. There must be no loss of anything once within his grasp."[7]

Looking for Profits

Why did Simmonds's contemporaries behave that way? Essentially for increased profitability, because as "competition becomes sharper, manufacturers have to look more closely to those items which may make the slight difference between profit and loss, and convert useless products into those possessed of commercial value, which is the most apt illustration of Franklin's motto that 'a penny saved is twopence earned:' our manufacturers have not been slow to appreciate this truth, as is shown in more than one branch of trade."[8] As a result, manufacturers simultaneously improved their environment.

Simmonds's book may have been the first treatise on the widespread and spontaneous recycling behavior of all industries, but it would not be the last. In the following decades, lengthy books on the art of turning industrial waste into wealth would again be written in the United Kingdom, the United States, Germany, and France, among other places.

Everywhere engineers and economists observed that, in modern parlance, "it paid to be green." As the American economist Rudolf A. Clemen noticed in 1927, "the development of by-products in industry is one of the most outstanding phenomena in our economic life." He added that "from the viewpoint of individual business, this manufacture of by-products has turned waste into such a source of revenue that in many cases the by-products have proved more profitable per pound than the main product."[9]

Why did this happen? In short, competition made manufacturers do it. "Modern conditions make it almost impossible materially to cut production and distribution of expense for the majority of commodities; hence one of the most important opportunities for gaining competitive advantage, or even for enabling an industry or individual business to maintain its position in this new competition, is to reduce its manufacturing expense by creating new credits for products previously unmarketable."

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When we observe long-term data trends on pollutants, however, it is often impossible to guess, based on the data alone, at what point new regulations were introduced in the generally improving picture.

He further noted: "Indeed, the materials from which the by-products in nearly all industries are manufactured today were formerly partially or wholly wasted, and the change to intensive utilization of these materials for by-product manufacture has been brought about by the ever-increasing force of competition in American business, both between individual concerns within a single industry and among different ones."

The Way Forward

As the Danish statistician Bjørn Lomborg reminded us in his detailed book *The Skeptical Environmentalist*, much of our traditional knowledge about the environment is based on preconceptions and poor statistics.[10] Actually, virtually all official statistics show us that in respect of the environment, mankind's lot has improved by practically every measure.

Some (although not many) environmentalists will acknowledge these positive trends, but will usually attribute these successes to tough environmental regulations. When we observe long-term data trends on pollutants, however, it is often impossible to guess, based on the data alone, at what point new regulations were introduced in the generally improving picture.

In the end, one must recognize that good entrepreneurs and managers have never needed government officials or business consultants to help them figure out that pollution and waste are both inefficient and expensive. There has never been any contradiction between doing well financially and environmentally at the same time. □

1. See for example, Paul Hawken, Amory Lovins, and L. Hunter Lovins, *Natural Capitalism: Creating the Next Industrial Revolution* (Boston: Little, Brown and Company, 1999). See also William McDonough and Michael Braungart, "The Next Industrial Revolution," *The Atlantic*, October 1998, pp. 82–92, www.theatlantic.com/issues/98oct/industry.htm.

2. For a more detailed historical survey, see Pierre Desrochers, "Industrial Ecology and the Rediscovery of Inter-Firm Recycling Linkages: Some Historical Perspective and Policy Implications," *Industrial and Corporate Change*, November 2002, pp. 1031–57.

3. Charles Babbage, *On the Economy of Machinery and Manufactures* (London: Charles Knight, 1832), http://socserv.socsci.mcmaster.ca/~econ/ugcm/3ll3/babbage/babb2.

4. Quoted in the *Journal of the Society of Arts*, December 12, 1856, pp. 56–61.

5. Peter Lund Simmonds, *Waste Products and Undeveloped Substances; or, Hints for Enterprise in Neglected Fields* (London: Robert Hardwicke, 1862); Peter Lund Simmonds, *Waste Products and Undeveloped Substances: A Synopsis of Progress Made in Their Economic Utilisation During the Last Quarter of a Century at Home and Abroad*, 3rd ed. (London: Hardwicke and Bogue, 1876).

6. Simmonds, 1862, p. 2.

7. Simmonds, 1876, p. 10.

8. Peter Lund Simmonds, *Descriptive Catalogue of the Collection Illustrating the Utilization of Waste Products of the Bethnal Green Museum* (London: George E. Eyre and William Spottiswoode for Her Majesty's Stationery Office, 1875), p. 4.

9. Rudolf A. Clemen, *By-Products in the Packing Industry* (Chicago: University of Chicago Press, 1927), pp. vii, 2.

10. Bjørn Lomborg, *The Skeptical Environmentalist* (Cambridge: Cambridge University Press, 2001).

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New Hope for Africa's Most Populous Nation

When riots surrounding the Miss World beauty pageant in Nigeria claimed more than 200 lives last November, a horrified world thought it was observing religious fanaticism run wild. Widespread reports blamed the bloodshed on an article in a local newspaper, in which the author stated that if the prophet Mohammed were around today he might have claimed one of the beauty queens as a wife.

But things may not have been quite as they were reported. Largely ignored by the major world media were comments of a Nigerian Muslim leader, Nabiu Baba Ahmed. He told the South African Press Association that the source of the trouble was not the offensive article but rather, government sponsorship of the pageant itself.

"It is true we have been having pageants in Nigeria for almost 40 years but that has never bothered us as Muslims because they were privately organized," Ahmed explained. "But this time it is systematically funded by the government using taxpayers' money and its agencies . . . which is unacceptable." He added that the government made matters worse by its involvement in scheduling the pageant during the holy fasting month of Ramadan. This information doesn't excuse the rioting, and neither did Ahmed, but it does suggest that we shouldn't accept what's in the newspapers as the definitive story.

Indeed, if full and accurate reporting from Africa were the norm, we'd be reading about a 33-year-old Nigerian named Thompson Ayodele. I predict that we soon will. A journalist for a major newspaper in Lagos, he is busy planting intellectual seeds in fertile soil—seeds that in time will yield big, positive changes for Africa's most populous nation. In 2001 he formed the Institute of Public Policy Analysis in Lagos. A private, nonprofit think tank, IPPA's objective as described on its website (www.ippanigeria.org) is "to provide market-oriented analysis of current and emerging policy issues, with a view to influencing the public debate and the political decision-making process."

I have met Ayodele on several occasions in the past year. He visited my organization in Michigan and attended one of our training seminars for free-market leaders. With great confidence I can say that he has what it takes to bring an idea revolution to his country—vision, passion, eloquence, and total commitment. Like his friend James Shikwati in Kenya (see my column last May, "A Leonard Read for Africa"), he is part of a new generation of Africans eager to liberate the continent from the shackles of failed socialist policies.

Ayodele's task is no small one, but he is invigorated by the challenge. In the last half-century, Nigeria's 130 million people suffered under a succession of corrupt, strife-ridden, statist regimes and a military dicta-

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torship until 1999, when a peaceful transition to civilian government took place. The current administration is making some progress toward political stability and a freer economy, but in the face of ethnic and religious tensions, it desperately needs thinkers and activists like Ayodele to educate the public about free markets. "What Nigeria needs," he says, "is the economic freedom that will result if government abolishes its many obnoxious laws that hinder private initiatives and innovations."

Thompson himself is the product of the power of ideas. Several years ago, and with no formal training in economics or philosophy, he was struck by an article in the *Times* of London by Julian Morris of the London-based International Policy Network (IPN). Morris explained how an international ban on the ivory trade would produce new incentives for profits in poaching and that the best way to save the elephants was to "privatize" them through a system of property rights and private ownership. Fascinated by this approach, Ayodele contacted Morris, who in turn put him in touch with free-market think-tank leaders in Britain and the United States. Ever since, he has immersed himself in reading and learning free-market economics and has become an articulate public spokesman in the Nigerian media.

IPN chairman Linda Whetstone lauds Ayodele for the network he is building within Nigeria: "He is managing to get the message out, despite enormous difficulties, and to explain that it is only the institutions of the free society that can help Nigerians—limited government, the rule of law, an independent judiciary, property rights, free enterprise, and freedom of speech."

In its first year the IPPA has sponsored two well-attended seminars for policy leaders that caught the attention of leaders in the Nigerian government. Udo Udoma, chairman of the Nigerian Senate's powerful appropriations committee, offered this glowing endorsement: "What IPPA represents, it core values and ideas, also represents m own long-cherished ideas and values wit which Nigeria can be made great and pros perous."

Ripe for Liberalism

Public opinion suggests that ordinar Nigerians may be ripe for free-market ideas Ayodele notes that the public exhibits nearly total lack of confidence in govern ment promises. Rich and poor in great num bers are opting for private education. Peopl know that government enterprises have beer huge and expensive failures. The reception Ayodele gets when he speaks to audience around the country is, he says, "positive and optimistic because Nigerians have seen every type of government failure imaginable and they are willing to try something that they see has worked in other parts of the world." He plans commentaries and conferences in coming months that will explain the wisdom of free trade, deregulation, and the expansion of private property rights.

Considering the history of Africa, the significance of Ayodele's work in Nigeria is enormous. With nary an exception, countries that gained their independence from colonial powers in the 1960s turned immediately to socialist central planning. The intellectual classes were nearly unanimous in their support for socialism and thoughtful opposition was virtually nonexistent. Now, the abysmal poverty and corruption those policies produced are animating a whole new class of activists and intellectuals on behalf of free-market alternatives. Almost all of the new think tanks springing up, like IPPA in Nigeria and Inter-Region Economic Network in Kenya, are committed to thrusting a stake through the heart of the socialist idea.

The liberation of a continent, one nation at a time, may have begun. □

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IDEAS ON LIBERTY
APRIL 2003

The Pentagon Ramps Up the War on Privacy

by David M. Brown

[**Editor's Note:** *As we went to press the U.S. Congress had hampered the Defense Department's ability to carry out the threat to privacy discussed in the following article. Under the provision adopted the Pentagon cannot proceed until it assesses for Congress the effects on civil liberties and cannot target American citizens without congressional permission. Unfortunately, the provision does not kill the program outright, but only, in columnist William Safire's words, puts "a bit in the mouth of the Pentagon's runaway horse."*]

In May 1997—several years before the terrorist attacks in New York City and Washington, D.C., "changed everything"—Charles Simonyi got a glimpse of the future. He fit the profile, and he was targeted.

Simonyi, a Hungarian-born computer engineer employed by Microsoft, had been through the drill many times before. He knew that the airport security people sometimes inspect carry-ons, and he was prepared for that. He knew that pocket change could set off the metal detector, and he was prepared for that, too: no pocket change. He knew that getting through security would go more smoothly if he was pleasant and compliant, so he was prepared to be pleasant and compliant. One thing he could not know, however, was how to make sure he would never "fit the profile" of a potential terrorist. And he did not know how to remain unruffled when singled out for humiliating attention—as the computer had singled him out this Friday.

With no lines at security, I got through in record time. My bags got X-rayed, and my level of whatever those portals you walk through measure was determined to be under the threshold. . . . A supervisor appeared . . . and handed me to Junior, who then proceeded—methodically, if not neatly—to unpack everything I was carrying, and to toss my clothes, toiletries, etc., into a dirty bin nearby.

Then it hit me. It was not that security was especially tight: It was only me they wanted. And that 'May I?' polite foreplay had gone out the window. The label my friendly hometown airline had affixed to my bags had unexpectedly made me a marked man, someone selected for some unknown special treatment. The routine was broken; the power had shifted; the violation had begun. I suddenly felt as if in the grip of a giant vise, a terrible feeling I had last experienced as a teen-ager before fleeing Communist Hungary.

When I recount this story to friends, this is where they start to smile, as if a diagnosis of my condition had suddenly become apparent. After all, if someone with post-traumatic stress disorder jumped two feet

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A major step in imposing a national identification regime would be the establishment of a centralized computer database to which a prospective ID card could be linked.

in the air every time a door slammed shut, good friends would be more concerned about the person's condition, not the door. In a like manner, my friends may suspect I am suffering from some Hungarian Refugee Syndrome, which makes me overly sensitive to perfectly reasonable intrusions by the state.

I try to explain: The communism I had fled was hardly traumatic or violent. One aspect of the horrible vise was the constant minor humiliations I had to suffer, such as interaction with the block warden, the party overlord of a block of houses, who had to give his assent to all matters tiny or grand, including travel. On this Friday in the United States, I was being singled out for an unusual and humiliating search. My personal goal was to fly to Los Angeles for a meeting that was important to me. If I had refused the search—cried 'NO!' as it were—I assume they would have let me go home, but I would have been forbidden to board the plane and would have missed my meeting. So I did what I had done 30 years ago: I chose to be humiliated just so I could reach my goal.[1]

From a form letter, Simonyi learned that passengers were being targeted for special treatment "both randomly and through an objective systematic approach based on direction from the FAA." He was witnessing something new in America. The federal requirement that air passengers present IDs in order to board domestic flights had been imposed just a year earlier. By the end of 1997, passengers were being routinely scrutinized by something called the Computer-Assisted Passenger Prescreening System (CAPPS I), a form of data-mining implemented by the Federal Aviation Administration that is supposed to peg which passengers are most likely to be terrorists. CAPPS does not necessarily finger people based on any *actual* evidence of either past or planned wrongdoing. Yet as Simonyi's experience makes clear, in America's burgeoning surveillance regime one may be treated like a criminal suspect just the same—guilty until proven innocent. All that is necessary is that one "fit the profile"—however that profile may be defined. CAPPS may not yet have been in place when he was treated like a criminal suspect in the spring of 1997. But the animating principle was certainly in place.

Total Information Awareness

Charles Simyoni's experience shows what Americans can expect on a routine basis—and already are beginning to see, in airports—if the surveillance regime now being planned for this country is ever fully instituted. Most people would not have to endure arrest or imprisonment, only continuous harassment and humiliation, including regular inspection of private data that they would never otherwise reveal to strangers. Some of us would learn to regard such treatment as "normal" and as "the price we must pay" for our freedom, or what's left of it by then. Others would never get used to such treatment—never regard it as reasonable to be treated like a criminal suspect when they have not done anything wrong.

In a previous article for *Ideas on Liberty*, I noted that after the terrorist attacks in New York and Washington, calls for a national ID card grew more frequent and insistent.[2] I added that in a still relatively free country like the United States, a full-fledged national

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The kinds of data that would be collected for analysis include educational, travel, medical, veterinary, country entry, transportation, housing, government, "critical resources," and communications (presumably including telephone records and web-surf records).

identification regime is unlikely to be imposed in a single wholesale reform. Rather, it would be imposed in incremental, precedent-setting stages. Once the invasive infrastructure was fully in place and woven into the web of everyday routine, it would be difficult to reverse the new "security" rituals. Even if the threat of global terrorism were to fade, what Milton and Rose Friedman call "the tyranny of the status quo" would likely prevail.[3] And in any case, there would always be criminals and mad bombers out there somewhere to provide a rationale for almost any level of surveillance. Such a sweeping forfeiture of rights to privacy and freedom is no temporary emergency measure that may be easily dismantled "once the war is over."

A major step in imposing a national identification regime would be the establishment of a centralized computer database to which a prospective ID card could be linked. In one respect the most zealous advocates of national identification are more ambitious than any pre-computer totalitarian state ever was. They not only want to compel the cardholder to establish "proof" of his identity at specific checkpoints. They also want to track and monitor the cardholder's movements and electronic transactions—with the records warehoused in a convenient enough form that bureaucrats and security personnel would not have to rummage through separate depositories of information to perform each investigation.

The proposal to combine state driver's licenses into a de facto national ID, linked to a national database, is one front on which this battle is being fought. Another is a proposal to issue a "trusted traveler" card to air travelers. Carol Hallet, president of the Air Transport Association of America, believes that airport security should have the capacity to tap the full range of government databases—from arrest records to immigration files and customs files. Reportedly, the federal government is indeed planning to establish a computer network that would hitch reservation systems to an array of private and government databases. The Transportation Security Administration is struggling to expand the Computer-Assisted Passenger Prescreening System into a far more comprehensive and extensive program, CAPPS II. All the private data CAPPS II taps would be analyzed with "data-mining and predictive software to profile passenger activity and intuit obscure clues about potential threats, even before the scheduled day of flight." Patterns of activity would generate a mind-reading "threat index," and passengers with a too-high index would be obliged to endure further scrutiny.[4]

All this is the backdrop to yet another effort to electronically canvass Americans, and the most ambitious one thus far: the Defense Department's Total Information Awareness (TIA) project, a project proposed and led by Vice Admiral John Poindexter of Iran-Contra fame. If built, this electronic dragnet would rummage through the private records of everyone, including people who never leave the house. In Poindexter's words, TIA's goal is to "break down the stovepipes" that currently separate private and public databases.[5] An astonishing range of electronically recorded personal-transaction data would be grabbed—with-

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A dishonest clerk at the Social Security Administration could not gain a fast track to your checking account or credit-card account if neither were flagged with your SSN, as is legally required.

out permission, without subpoena, without warrant, without a side glance at the Fourth Amendment of the Constitution—and thrown into a single mammoth, computerized cauldron.

Although at least one defender of TIA claims that the project has value at least as a research project that would, allegedly, help the military or intelligence agencies defend us against the cyber-assaults of America's enemies,[6] its crafters have not been coy about the program's actual goal: to sweep aside previous restrictions on indiscriminate spying on Americans and their doings. "We must become much more efficient and more clever in the ways we find new sources of data, mine information from the new and old, generate information, make it available for analysis, convert it to knowledge, and create actionable options," Poindexter says.[7]

The Information Awareness Office declares openly its aim of "revolutioniz[ing] the ability of the United States to detect, classify and identify foreign terrorists—and decipher their plans—and thereby enable the U.S. to take timely action to successfully preempt and defeat terrorist acts. To that end, the TIA program objective is to create a counter-terrorism information system that: (1) increases information coverage by an order of magnitude, and affords easy future scaling; (2) provides focused warnings within an hour after a triggering event occurs or an evidence threshold is passed; (3) can automatically queue [sic] analysts based on partial pattern matches and has patterns that cover 90 percent of all previously known foreign terrorist attacks. . . ."[8]

The kinds of data that would be collected for analysis include educational, travel, medical, veterinary, country entry, transportation, housing, government, "critical resources," and communications (presumably including telephone records and web-surf records).[9]

Are there risks to such data scavenging? Even for innocent people?

The Dangers of Databases

Such super-snooping is not without precedent. We do have a track record to consult . . . and the track record is not auspicious. The hazards of coercive data collection are myriad and have become more severe and obvious as private data has become easier and easier to collect, store, and retrieve—all without the permission and often without even the knowledge of the persons whose information is being pilfered. Any pledges of confidentiality that attend the construction of TIA-style data scooping must be considered in light of similar promises in the past, promises that have often been broken.

Once your personal information is typed into a database, linked and tagged by such "identifiers" as the now-all-important Social Security number (SSN; originally mandated by government, of course), that is not the end of the matter. Your private information is not only stored, it is used; and not merely for originally stipulated purposes. Government agencies that acquire private information have indeed readily divulged that data to other government agencies—and sold it to private companies. In turn, private companies have often sold private information to other private companies and to the government. Meanwhile, thieves bribe and steal from both.

Vendors and credit-card agencies are cer-

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tainly culpable when they release highly sensitive information without the permission of the owners. Such actions are tantamount to leaving a customer's safety-deposit keys right out on the table for anybody to grab. But many now-commonplace abuses of privacy would never have been possible to begin with had the government never ordered that so much of our private data be linked and labeled by a single numeric key that is knowable to anyone who has a name, a valid recent address, and $50 to pay a website. Yet in the arena of personal privacy, as in many other arenas, advocates of government intervention often find it convenient to ignore the destructive consequences of previous government intervention along the same lines.

In recent years, thanks in part to the accelerating ease of electronic-information distribution, incidents of credit-card fraud and identity theft have skyrocketed. Though exact numbers are unavailable, guesstimates range from "between 500,000 and 750,000 separate cases of identity theft in 2000" alone. "Identity theft has become such a common crime," notes privacy expert Simson Garfinkel, "that individual cases no longer warrant newspaper coverage: what garners coverage now are identity theft rings—groups of criminals who steal the names, SSNs, and credit histories of dozens or hundreds of people at the same time. Identity theft rings have been found operating out of the Social Security Administration, the human resources departments of Silicon Valley startups, and even multinational telephone companies."[10]

Although abetted by computerization, much of the vulnerability here is attributable at root to the government mandate. After all, a dishonest clerk at the Social Security Administration could not gain a fast track to your checking account or credit-card account if neither were flagged with your SSN, as is legally required. The clerk might still be able to rob you if he had enough other information to work with. But without a single and ubiquitous data-tag like the SSN, it would be harder.

Private Abuse of Private Data

Criminal activity may be facilitated by firms that are careless about the hazards to which they expose their customers. For example, in 1996 Lexis-Nexis—which makes a large amount of personal data on individuals available to its customers—went so far as to publish the SSNs of almost all residents of the United States in its P-TRAK database. The ensuing uproar implied that many citizens understood a fact of life that had somehow eluded the folks at Lexis-Nexis: that the SSN had become both a near-universal identifier and an almost totally insecure one, much more dangerous to hand out to strangers than a home phone number. Swamped by angry callers, Lexis-Nexis shut down their new "service" less than two weeks after introducing it.[11]

Yet this firm's lapse in judgment consisted only in making even more easily available the kind of information that is already easily available. Even under the minimal safeguards to which the credit-card reporting firms are subjected—and which they chafe under[12]—it is easy enough to assume the role of a vendor, employer, or landlord who is "entitled" to view a consumer's credit-card history. While the reporting firms are not the most responsible culprit in all this, critics are right to suggest that these firms could do a lot more than they do to prevent credit-card fraud and identity theft.[13]

When the credit-reporting firms are not giving your information away without your permission, they are losing it to crooks, sometimes in great gobs, as customers of Ford Motor Credit recently discovered. In May 2002 Ford reported that someone had stolen the firm's access code for 13,000 credit files maintained by Experian, one of the "three big" credit-reporting firms. The perpetrators downloaded "everything they needed to assume a person's identity and open a credit card or bank account in his or her name. Experts say the thieves could also establish telephone or utility service in the person's name, obtain a loan, or use the information to obtain government documents or even government benefits."[14] Ford

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and its customers were not the only ones who had to worry about the rip-off. Only 400 of the 13,000 files downloaded using the company's access code belonged to patrons of Ford Motor Credit.

Large-scale cyber-snatching of privileged information grows ever more prevalent. Sometimes it looks like the kind of thing a terrorist might do. In January 2000 a hacker boasted that he had swiped 350,000 names and credit-card numbers from the website of CD Universe, a music store. He demanded $100,000 for the return of the information. To demonstrate his sincerity, he posted the information of several thousand customers on the web. SalesGate.com and the Western Union website have also been victimized by cyber-snatchers. In September 2000 Western Union reported that a hacker had grabbed the credit-card information of 15,700 customers.[15]

Sometimes the crooks work for the company. In March 2002 a former employee of the Prudential Insurance Company was arrested for stealing information from a 60,000-name database, then distributing it over the Internet.[16] The employee, Matthew McNeese, posted messages selling or even giving away the names, the Social Security numbers, and the credit-card numbers of his victims.

And it's not just the bad guys who are mauling our data. Innocent errors by bored data-entry clerks can also wreak havoc. In 1991 an investigator for Consolidated Information Service, a mortgage reporting firm, found after examining 1,500 credit reports from the "big three" that 43 percent contained errors. In the same year, 1,400 homeowners got a bad rap when a TRW contractor mistakenly characterized tax bills as tax liens. It was not easy for the homeowners to get their credit reports corrected. A similar snafu occurred a year later in Cambridge, Massachusetts; this time it was an Equifax contractor who screwed up.[17]

What about government databases? Are they immune to the kinds of hazards and glitches that have afflicted private data collection? We'll review some of the track record in that arena next month. □

1. Charles Simonyi, "I Fit the Profile," Slate.com, May 25, 1997, http://slate.msn.com/default.aspx?id=2058.

2. David M. Brown, "The Danger of National Identification," *Ideas on Liberty*, October 2002, www.fee.org/vnews.php?nid=5188.

3. Milton Friedman and Rose D. Friedman, *The Tyranny of the Status Quo* (Harcourt: New York, 1984).

4. See, for example, Elliot Borin, "Private Info Becoming Plane Truth," *Wired News*, September 16, 2002, www.wired.com/news/politics/0,1283,55037,00.html. See also Robert O'Harrow Jr., "Intricate Screening of Fliers in Works; Database Raises Privacy Concerns," *Washington Post*, February 1, 2002. Some proponents of data-mining software regard it as equivalent to mind-reading. "'This is not fantasy stuff,' said Joseph Del Balzo, a former acting administrator of the Federal Aviation Administration and a security consultant working on one of the profiling projects. 'This technology, based on transaction analysis, behavior analysis, gives us a pretty good idea of what's going on in a person's mind.'"

5. Quoted in John Markoff, "Pentagon Plans a Computer System that Would Peek at Personal Data of Americans," *New York Times*, November 9, 2002, www.nytimes.com/2002/11/09/politics/09COMP.html?tntemail0.

6. See E.G. Ross, "Snoop Project," *The Objective American*, December 4, 2002, www.objectiveamerican.com/getbest.cfm?id=1263.

7. Quoted in Markoff.

8. Program Objective of the Total Information Awareness (TIA) System, www.darpa.mil/iao/TIASystems.htm. TIA is a project of the Defense Advanced Research Projects Agency (DARPA).

9. See the TIA diagram archived by the Electronic Privacy Information Center at www.epic.org/events/tia_briefing/tia_categories.gif. Although the diagram was taken from the TIA web site, it appears to no longer be posted at that site. The creepy-looking "eye-in-the-pyramid" logo that aroused such furor and sardonic amusement among privacy advocates has also been removed. Its appropriate symbolism has been replaced by a more generic red triangle, sans the all-seeing eye.

10. Simson Garfinkel, *Database Nation: The Death of Privacy in the 21st Century* (Sebastopol, Cal.: O'Reilly & Associates, 2001).

11. Ibid., p. 10.

12. Ibid., p. 25.

13. Ibid., p. 31.

14. Bruce Mohl, "Large-scale identity theft is painful reminder of risk," *Boston Globe*, May 12, 2002.

15. Garfinkel, p. 275.

16. Jacob H. Fries, "Worker Accused of Selling Colleagues' ID's Online," *New York Times*, March 2, 2002.

17. Garfinkel, p. 28.

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IDEAS ON LIBERTY
APRIL 2003

Going Postal

by Ted Roberts

I like my mailman because in a drowsy occupational environment where dismissal for sleeping in the mail truck is unheard of and battlefield promotions are rare, John delivers the goods. He's the real McCoy. He could have been a dust-crusted, hard-riding pony express rider. Big John would have lugged his horse—mail satchels strapped to his side—the last quarter mile into the relay station.

Sometimes, instead of stuffing my mail and packages into the mailbox, John brings them to my door. With a smile, too. No question about it—John is an all-star on the team that's woefully short on incentives. There are no bonuses for the men and women in blue; and the coach never makes a halftime speech. His only muse—his only well of inspiration—is his work.

But John carries Christmas in his heart all year round—especially those visions of holly-wreathed, green envelopes that contained a matching green picture of Alexander Hamilton. Happy customers always remember their mailperson in latter December.

But I owed him more than a Christmas tenner for his devotion, I reflected. So, one morning I drove over to the post office to put in a good word for this servant of the people. It couldn't hurt.

My intentions were totally honorable. I did not want to privatize the postal service—nor did I want to reduce the price of stamps.

But there was always the danger of a misunderstanding. My last tête-à-tête with the local postmaster had gone badly. I had gently suggested that instead of a line of 20 customers loaded like mules with bulky packages, why not shorten that line with a self-service technique? Why not put a scale out on the counter? The customer ("we are customers, ya know," I said civilly) weighs his own package, buys the requisite number of stamps from the machine, and he's on his way without perturbing a post-office employee.

The manager smiled at my faith in my fellow man. Problem was, he said, that the public would not get it right. They'd flub the weighing operation—apply incorrect postage. The package would be returned. I knew what he was thinking. Even if we could read the scale correctly, somehow we would lick the stamps wrong.

But that was then—this was now. And initial omens this morning were good. No line, which was unusual. I went right to the window. And I bought a whole roll of stamps at 37 bucks, which was a 9 percent increase over last year. (I figured maybe it would go better if I bought something first; my image should reflect "customer" not "Inspector General.") One of life's cosmic mysteries is why the price of postal services perennially inflates even though the prices of PCs, airline fares, long-distance communica-

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tions, chicken-leg quarters, and Big Macs have plummeted.

But I paid my bill with a smile and then announced I'd like to see the boss, quickly adding to show my benevolence that I wanted to commend an employee. This provoked a long discussion between my stamp salesman and the stamp salesman in the next cubicle about the identity and location of the boss. Finally, a head with a suspicious expression peeped out of the portal that separated the mob in the lobby from the uniformed post-office employees.

I announced my mission. The head with the suspicious expression almost smiled. He said there was a form for this purpose. He searched the public counter for the form. He couldn't find the form. "I'll tell him," he said over his shoulder as he disappeared into that open portal leading to the nonprofit world of the Postal Service, where losses multiply, stamps go up every year, and nobody is ever dismissed, even though the employees aren't efficient enough to access a form that testifies to their efficiency.

I felt like Alice in Wonderland. I didn't want him to *tell* John. I wanted him to do something *rewarding* for John. I know they don't deal in stock options, bonuses, and vulgar incentives, but maybe a free flight on the mail plane to Vegas. Or the use of that cute little red, white, and blue trucklet for a weekend date. Poor John, how long before the system dries up his heart? □

Inspired? Shocked? Delighted? Alarmed? Let us know.

We will print the most interesting and provocative letters we receive regarding articles in *Ideas on Liberty* and the issues they raise. Brevity is encouraged; longer letters may be edited because of space limitations. Address your letters to: *Ideas on Liberty*, FEE, 30 S. Broadway, Irvington-on-Hudson, NY 10533; e-mail: iol@fee.org, fax: 914-591-8910.

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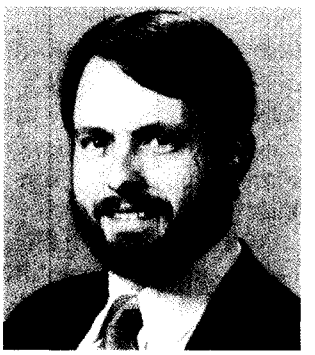
IDEAS ON LIBERTY
APRIL 2003



Lawyers Run Amok

As Washington, D.C., prepared for the descent of thousands of anti-globalization protesters last fall, George Washington University law professor John Banzhaf proposed deploying the ultimate weapon: trial lawyers.

Hit the demonstrators with a class-action lawsuit! Luckily, the city survived the protests without resorting to such extreme measures.

But the proposal was par for Banzhaf, who believes that just about every decision in life should be decided by judges. No rhapsodic commitment to liberty. Just send in the lawyers.

Unfortunately, there are few people Banzhaf would not like to sue. He apparently will not be satisfied as long as anyone is making a personal decision that has not been cleared by him in court.

He cites among his accomplishments sex-discrimination lawsuits against the Washington Cosmos Club and South Carolina's military-oriented university, The Citadel; hair stylists who charged more to cut women's hair and dry cleaners who charged more for women's clothes; and bars that discriminated against men with "ladies' nights."

Long known as the "Father of Potty Parity," last year he joined in a federal complaint against the University of Michigan for having only a third more restroom facilities for women. In his view, this constituted illegal "sexual harassment."

He really hates the tobacco companies. Consenting adults have no right to make what he thinks is a bad decision. He was involved in the campaign to ban cigarette advertising on TV. He naturally backed the legal avalanche of state Medicaid lawsuits against cigarette makers, and last fall put out a press release lauding a judge for banning parental smoking around a child in a custody case.

Banzhaf also has suggested legislative action, such as a tax proportional to the medical costs created by consumption of particular foods. Banzhaf contends: "If there are products the use of which cause large costs, grave costs, it is better that the burden of those costs fall on people who use and make the products."

He says that some of the revenues should go "to fund healthy eating messages to compete against the $30 billion that the food industry spends." And government should "put more health foods in vending machines, install bike racks and showers at public buildings to encourage more exercise, and so on."

Should his fellow citizens and their elected representatives be too stupid to go along with his plans, however, there is always the class-action lawsuit. Sadly, though, while helping to pioneer the basic theory of fat litigation, Banzhaf was slow in finding actual plaintiffs. An overweight 56-year-old, Caesar Barber, used another lawyer to file the first suit, charging McDonald's, Burger King, KFC, and Wendy's with making him fat.

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But now Banzhaf is trying to catch up. He has complained that fast-food companies "aim in particular [at] young people," and kids thereby "fall into the trap and become obese at youth." He's threatening to sue schools and school boards "for entering into contracts whereby they get paid for every fat burger and sugary soft drink they sell to kids."

Moreover, Banzhaf has filed a class-action case against McDonald's for selling to children. Suing on behalf of kids "avoids the major argument that plaintiffs are supposedly responsible for their own actions, since one can hardly blame youngsters who are lured into McDonald's by playgrounds, gotta-have toys in Happy Meals, birthday parties, etc."

Elsewhere Banzhaf has admitted that consumers have some responsibility, but "to exercise their personal responsibility, consumers need the same clear and conspicuous disclosure of calories and fat content in fast foods that we enjoy and use regarding food purchased in stores." As if most people don't know that a Big Mac has more calories than a tub of Tofu.

We Know Better

The basic point is that people know better, but still choose "bad" stuff. And most people still eat most meals at home. Grocery stores, diet doctors, and packaging companies could be next on the legal hit list. Even people who give out candy on Halloween. Sue 'em all!

Seem unlikely? Observes Banzhaf with delight: "Never underestimate the tenacity of a lawyer working on a contingency fee." Indeed.

Nor are private suits the only option. Banzhaf says we could see "similar state lawsuits against fast food companies for the public costs of obesity, just as states were so successful in suing tobacco companies for the public costs of smoking."

The argument that we are all paying for the costs of fat people and that instead such expenses should be "confined to those who use the products or produce them" is superficially attractive. But in the case of smoking, government actually benefited: though smoking-related diseases are expensive, they are not as expensive as decades more of age-related diseases.

Moreover, that government tries to socialize the cost of everything—health care, for instance—doesn't entitle it to control our lives. Should people be allowed to hang-glide? Should people be forced to exercise? Why let individuals assess the relative benefits and risks of any activity when the rest of us pay?

Banzhaf is a dedicated social engineer. He told one critic, "the problem is, the remedies that you proposed—exercise, moderation in eating—and what some others propose—parental responsibilities, individual responsibility, education—aren't working."

He'd prefer that government legislate. But even here there are limits. Banzhaf allowed in an interview with a French publication: "one can change the behavior of the companies much more easily than that of the consumers. . . . I can't think of any way we can legislate that people go out and jog a mile a day." We should be thankful for small favors.

"But we can change how fast foods are advertised, promoted, sold. We can adopt taxes on fast foods so the losses are borne much more by people who eat them," he exults. Who cares if people like fast food? He doesn't want them to eat it, and he will do whatever is necessary to stop them. If government won't do his bidding, then "as in the tobacco area, where the legislatures did not act, we were forced to litigate." Lawsuits pushed their way out of his pen in the same way that hamburgers forced their way into Caesar Barber's mouth.

When will all this end? Never, if Banzhaf has his way. He told *Insight* magazine: "I'm not sure anybody at this time can say. I would suggest that we have to work it out the way we always have. Which is . . . in the great laboratories of law that are our courts."

Freedom requires responsibility, a willingness to bear the cost of one's actions. Increasingly, however, Americans want someone else to bear the consequences. □

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IDEAS ON LIBERTY
APRIL 2003

Tax Withholding: An Immodest Proposal

by Dale Haywood

At the beginning of each class I teach I explain why I dislike boxing. I make the point to help my students understand what I believe is the purpose of education. Boxers have a clear-cut goal: to knock their opponents unconscious. That's exactly opposite our goal as students. We strive to become *more* conscious.

For example, as students of economics we want to become more conscious of why some people on this planet are rich and others are poor. As students of accounting we want to learn the vital role that accurate income statements, balance sheets, and statements of cash flow play in the wise allocation of real capital among alternative investments. As students of ethics we want to learn what responsibility people have for themselves and what responsibility they have for others. Yes, I consider education a consciousness-*raising* activity.

Those of us who hold this view of education are likely to be especially sensitive to consciousness-*lowering* experiences. There are numerous examples of these in our lives. But as someone conscious of the vital roles that private property and limited government play in promoting human liberty and prosperity, I suggest that the withholding of federal personal income taxes just might be the premier example of an anesthetizing experience. Because withholding is automatic and regular, I believe most workers quickly resign themselves to it. Thus it is consciousness-lowering.

And the result? Here's an example from Britain: "Lack of knowledge seems to be the best explanation of why the entire NHS [National Health Service] has continued in its present form. Public opinion polls show that most British voters greatly underestimate the taxes they actually pay to support the NHS. About 60 percent of voters, for example, believe they pay only 5 percent of the amount they actually pay to finance this health service. Given this perception, small wonder that the NHS is one of the most politically popular programs in Britain." (Quoted in Edwin G. Dolan and John C. Goodman, *Economics of Public Policy* [New York: West Publishing Company, 1989], p. 51.)

So what's to be done to bring taxpayers' perceptions in line with reality—and thus equip them to act more rationally? What will it take to raise the consciousness of taxpayers? The following two illustrations may help answer these questions.

For some months my 90-year-old mother-in-law has been in a nursing home. For part of that time she has had a roommate named Alice. While visiting my mother-in-law, my wife and I visit Alice also. Several weeks ago Alice was telling us about one of her granddaughters, a college student who worked in Chicago last summer. She was making good money, but when she got her first paycheck

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she was stunned by the big difference between the pay she was quoted at her job interview and the amount of her paycheck. A big part of that difference was due, of course, to the withholding of income tax. This was the first time in her young life that she was personally and directly hit with a significant amount of income tax. It was definitely a consciousness-raising experience. At least for educational purposes, this was a good situation.

But, unlike Alice's granddaughter, most of us are long past the transition from not being subject to the income tax to being subject to it. The jolt we felt at that time of transition has faded from our memories. For educational purposes, this is not a good situation.

It's not good because we cannot possibly make rational cost-benefit analyses of government programs if we're not conscious—or not fully conscious—of the costs of the programs. That's what we learn from the misperception those British taxpayers had of the cost of their National Health Service.

Of course, it's not just proponents of big government who use the withholding device to desensitize people to costs. Once a year at the university where I work, one of my colleagues tries to persuade me to sign up for withholding for the United Way. A big donation, spread over 24 pay periods doesn't seem so costly, right? This is an annual ritual at businesses throughout the United States.

The company with which I have auto insurance, AAA, encourages me to pay for my insurance by authorizing automatic monthly charges (of about one-twelfth of the annual premium) to my credit-union savings account. Yes, this is a convenient way to pay for insurance, but I'm guessing it also blunts criticism of the size of insurance premiums.

Some Tax Not Withheld

Not everyone has his or her income tax withheld. My mother-in-law lives off stock dividends and certificate-of-deposit interest from investments she made during her long teaching career. The tax on this income is not withheld, so each year she's required to estimate her tax liability and to write a check each quarter to the IRS. Thus even in her present situation she continues to be very conscious of these regular drains on her checking account.

We need to find a way to make people other than new workers and retirees more sensitive to the cost of government. To be sure, politicians, in their quest for votes, will tout the alleged benefits of the programs they favor. They always have, and they always will. They have little to say about the costs. That's why we need remedial action.

Let's grow up. Many of the things we want in life are costly. Let's stop kidding ourselves with devices that suggest otherwise. For the sake of a more rational society, I propose that we start stripping these devices out of our lives. The withholding of taxes, being the premier consciousness-lowering scheme in the eyes of at least this libertarian, should be the first to go.

My consciousness-raising alternative to withholding is this: Allow employers to pay their workers their gross earnings. Ask employers simply to tell their employees how much tax would have been withheld had the law not changed. Ask employees to pay that amount in cash, not by automatic deductions from their checking accounts. Ask employees to do this every time they get paid. Then let's stand back and see what happens.

There is a wealth of evidence that two of the most vital prerequisites for liberty and prosperity are private property and limited government. Can you think of a single change that has the potential for doing more to reduce the size of government? What an education that would be. □

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IDEAS ON LIBERTY
APRIL 2003

Homeland Security Circa AD 285

by Harold B. Jones, Jr.

Alexis de Tocqueville said that nothing is so threatening to individual liberty as extended war. Wars add to the relative power of the central government, and this change in the balance of power is accompanied by the decline of personal freedom. "A long war almost always places nations in this sad alternative: that their defeat delivers them to destruction and their triumph to despotism."[1]

He seems to have been thinking of Rome, which was destroyed less by barbarian invasions than by its own bureaucracy. The record points to the dangers in Mr. Bush's Department of Homeland Security.

The last of the second-century emperors who paid attention to the proper tasks of government was Marcus Aurelius. At the center of the following century's chaos was the Roman Army. It was finally brought to heel by Aurelian, of whom Gibbon in an admirable passage says, "His own conduct gave a sanction to his laws, and the seditious legions dreaded a chief who had learned to obey, and was worthy to command."[2]

When Diocletian came to the throne in 285, the single most powerful force on the planet, the Roman military, was a pale shadow of its former self. Its decline is evident in the fact that to provide for the city's security, Aurelian had been forced to build a wall, the first that Rome had seen in five centuries.[3] The *Pax Romana* was a thing of the past.

Diocletian's plan for homeland security was one of systematic centralization. The empire was divided into 96 provinces, 72 dioceses, and 4 prefectures, each with its own civil and military rulers. Every official received his appointment directly from the Emperor. A vast bureaucracy stretched out to choke anything around which it could get its tentacles. The Roman government, says Will Durant, had come to regard democracy and local autonomy as the luxuries of security and peace; it "excused its dictatorship by the needs of actual or imminent war."[4]

The technique of concealing irresponsible expenditure by means of public borrowing had yet to be discovered. Current expenses for the army, public works, the dole, the bureaucracy, and the imperial court had to be met from current receipts. Taxes rose to new heights. As the burden grew, an increasing number of people tried to escape from it. Virtually every taxpayer became a tax evader. A special force of revenue police was organized to examine every citizen's financial resources. Slaves, wives, and children were tortured in the attempt to determine every household's assets and income.

To insure supplies for the cities and the army, Diocletian entrusted the control of industry to the imperial bureaucracy. The merchants, ship owners, and crews of the

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Diocletian

grain trade were persuaded to accept this control in exchange for guaranteed employment and a guaranteed rate of return. Armaments factories, textile mills, and bakeries were nationalized if they could not meet the government's demands for goods of a specified quality at a specified price. Workers were bound to their jobs. Detailed regulations spelled out the tasks of butchers, bakers, masons, glassblowers, and ironworkers. "In every large town," writes Paul-Louis, "the state became a powerful employer . . . standing head and shoulders above the private industrialists, who were in any case crushed by taxation."[5]

From the citizens who attempted to meet their obligations to the Empire with its own debased currency Diocletian demanded payment in kind. Warehouses were set up to store the proceeds. In 301 he issued his *Edictum de pretiis*, which put a wage-price cap on everything that was important for imperial security. In the preamble to this law he described himself and his colleagues as the "watchful parents of the whole human race" and complained of the "abominable thieves" who were attempting to destroy "the general prosperity" with "usurious and ruinous prices."[6]

These "reforms," says M.I. Rostovtzeff, gave "permanence to the policy of organized robbery on the part of the state" and "made all productive economic activity impossible." But there were fortunes to be made if one could find a place at the public trough. Society was thus "divided into two classes: those who became steadily poorer and more destitute, and those who built up their prosperity on the spoils of the ruined empire."[7]

Destroyed by taxation, farmers ceased to maintain their drainage and irrigation systems. As marshes reclaimed the land, malaria became more prevalent. Roads deteriorated and with them the little that was left of the empire's once busy commercial life. Private citizens found no reason to exert themselves on behalf of a civilization that brought them nothing but pain. Those who could escape the burdens of responsibility did so. The barbarians did not so much conquer Rome as take over a polity that had lost the will to live.

Homeland Self-Destruction

Why did Rome rise as it did, and why did it fall? These, it has been said, are history's greatest questions. The declining vigilance associated with the prosperity of the second century and the rising uncertainty associated with the political chaos of the third may provide partial answers. Rome may already have had one foot in the grave by the time Diocletian came to the throne. If that is true, however, it is equally true that the final nails of the Roman coffin were hammered in by the centralization of the third and fourth centuries.

Although it may be too early to talk about the final nails in the American coffin, it is more than possible that the Department of Homeland Security will get the country measured for one. Twenty-two federal departments will be reorganized into four divisions and provided with a budget of $40 billion. In size Homeland Security will be behind only Defense and Veterans Affairs. The net effect, according to Mr. Bush, will not be an expansion of federal power but the use of new technology and management techniques in the creation of an "agile organization" that can meet constantly evolving dangers.

He should know better. His own most bitter battles have been not with the Democrats in Congress, but with federal officials. The EPA, for example, was quick to undercut his policy on the Kyoto agreement by insisting on emissions as the cause of global warming. Some of this bureaucratic inde-

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pendence may be traceable to the policies of the Clinton administration, which allowed federal officials to run free. Most of it, however, is due to the nature of bureaucracies, which seem to operate by laws of their own. Commenting on the vexations awaiting his successor in the White House, Harry Truman said, "He'll sit here and he'll say, 'Do this! Do that!' And nothing will happen. Poor Ike—it won't be a bit like the Army."[8]

While bureaucracies are in theory subservient to Congress and the president, in practice they display a large measure of independence. Max Weber observed that a high-ranking civil servant, whose position is secure, has little to fear from an elected official, whose position is not. The bureaucrat, moreover, having been at his post for a long time, knows more about the inner workings of government than the elected official does.[9] The uncomfortable truth is that George Bush is more dependent on his bureaucrats than they are on him. His small victory with regard to union rules and accountability in the new department does nothing to change that.

Bureaucracies are even less responsive to the demands of a changing situation than they are to orders from above. According to the Peter Principle, "Bureaucracy defends the status quo long past the time when the quo has lost its status."[10] This is no accident. It flows from the nature of bureaucracy, which Weber said was designed to meet "calculable and recurrent needs by means of a normal routine."[11] Bureaucracies can (sometimes) deal with the predictable by means of a familiar procedure, but they have trouble making decisions. Meetings go on endlessly and nothing happens, as in the case of the Federal Aviation Administration's process for picking the colors of a Denver air-traffic control tower, which took six years.[12] And if bureaucracies cannot make decisions they are incapable of initiative, creativity, or innovation.

A bureaucracy excels at preventing, said Tocqueville, not at doing. A local headline reads, "Bureaucracy Leaves Computers in the Dust." The story is about a dozen boxes of Gateway personal computers that sit unopened in a courthouse storage area. The county clerk purchased them three years ago for managing court fees but neglected to obtain the necessary software and has since forgotten about them. According to one state representative, this is the common experience with government's attempt to enter the information age.

Such a record provides an idea of the administrative problems facing Diocletian. He thought he could deal with them by increasing the number of his officials and arranging them in a taller pyramid. He soon learned, as Mr. Bush is about to learn, that a bureaucracy becomes even less effective as it expands. Dr. Max Gammon's Theory of Bureaucratic Displacement says that in every bureaucratic system an increase in expenditure will lead to a decrease in productivity. Expanding bureaucracies, he says, become "like 'black holes' in the economic universe, simultaneously sucking in resources and shrinking in terms of 'emitted' production."[13] Case in point: the bureaucracy that reduced Rome's capacity for dealing with the challenges of the late third and early fourth centuries. It is probable that the Department of Homeland Security will have a similar effect on America's capacity for dealing with terrorism.

Mind Control

This assumes that the threat really is all that it has been made out to be. The media's willingness to adopt "terrorism" as a central theme should be enough to give us pause. It is possible that the recipe for the current crisis reads "one part fact to ten parts spin." During the late '50s and early '60s it was argued we needed to expand the defense budget because, given the rate at which the Soviet economy was growing, the Russians would soon overtake us. Perhaps the future will show that early twenty-first century worries about terrorism are no better founded than mid-twentieth century concern over the jet bomber and missile "crises."

If the threat is real, though, administrative centralization is not the way to deal with it. A long stream of research has demonstrated

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hierarchies' shortcomings when dealing with uncertain environments. What works in such situations are organizations that depend on strong personal commitment and "diffuse interpersonal ties."[14] What works, in other words, are organizations like al Qaeda. In dealing with them, a stodgy bureaucracy cannot be expected to have much success.

To the extent that the threat is real, Mr. Bush's Department of Homeland Security will accumulate nothing more than a list of explanations for its failure to stem terrorist attacks. If this happens, it is unlikely that the officials in charge will be told to pack their bags and go home. The more probable result will be that failure will lead to requests for additional funding, the bureaucracy will expand, and its ineffectiveness will combine with its expense to make it unbearable. That is what happened to Rome. "The number of ministers, of magistrates, of officers, and of servants, who filled the different departments of state," writes Gibbon, "was multiplied beyond the example of former times; and (if we may borrow the warm expression of a contemporary), 'when the proportion of those who received exceeded the proportion of those who contributed, the provinces were oppressed by the weight of tributes.' From this period to the extinction of the empire, it would be easy to deduce an uninterrupted series of clamors and complaints."[15]

As complaints increased, the emperors felt an increasing need to get control of public opinion. Galerius convinced Diocletian that Christianity was the last obstacle to absolute rule. The persecution was carried out with the same bureaucratic plodding that characterized everything else about third-century Rome. One could avoid trouble simply by filling out the paperwork to show that he had made obeisance to the official gods: "To the commission appointed to supervise sacrifices . . . I request you to certify this below."[16]

When Constantine took control of the Empire in 312 the persecution came to an end. His "conversion" to Christianity gave expression not so much to a change of heart as to an insight with regard to the regulation of popular sentiment. Better organized than paganism, the Church was a better means to the uniformity of opinion. Constantine may have become a Christian toward the end of his life, but for as long as he was on the throne he regarded religion as a device for easing the problems of administration. This is what he told his bishops: "I had proposed to lead back to a single form the ideas which all people conceive of the Deity; for I feel strongly that if I could induce men to unite on this subject, the conduct of public affairs would be considerably eased."[17]

It was not long before the Church, now backed by the power of a threatened state, became more insistent on uniformity and more effective in enforcing it than paganism could ever have hoped to be.

Suppressing Dissent

The history of the United States offers fewer precedents than that of Rome for the use of violence in the pursuit of political correctness. One need not go back to the Salem witch trials, however, to see that Americans are as much subject to mass hysteria and therefore to cooperation in the suppression of dissent as any other people. The McCarthy hearings spoke to a widespread concern and were allowed to continue. More recently we have McCain-Feingold's attempt to legally restrict free speech.

Then, too, we have writers like Philip Howard, who was amazed to discover "that America has lost the idea that people with responsibility . . . should have the authority to make decisions just because it seems right."[18] The people subject to their decisions, in other words, should have no right of appeal. To such sentiments former Senators George McGovern and Alan Simpson gave their support in a *Wall Street Journal* article entitled "We're Reaping What We Sue."[19] Its title notwithstanding, the article had little to do with frivolous lawsuits. It was concerned primarily with setting bureaucratic decisions free from the nuisance of challenges in the courts. As Howard puts it with a clever semantic shift, the

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"regime of individual rights" has now become a threat to freedom.[20]

Two generations before Diocletian, Roman jurists like Papian, Paulus, and Ulpian had begun similarly to offer arguments for the necessity of absolutism. During World War II, the Office of Price Administration required slaughterhouses to deliver meat for less than the cost of the cattle and the labor it took to process them.[21] The distance between ancient Rome and modern America may not be so great as the centuries suggest.

Our Last Best Chance

The expression "War on Terror" leads us astray. It is not a matter of pitched battles between standing armies. There will seldom be a need for moving regiments to the right place on the field. Terrorist acts are local and specific. They can be hindered only by means of personal initiative and individuals' expertise with regard to the situation at hand. That is the story behind Rome's success in repelling barbarian invasions during the centuries before the Punic Wars. It is also the story behind America's only success in thwarting the attacks staged on 9/11. It is the story as well of the speed with which New York was cleaned up in the days that followed.

In the wake of Hurricane Andrew, Miami residents took the initiative to clean things up and help one another. They were soon joined by volunteers from as far away as Canada. Progress was rapid—until the Dade County Emergency Management Office stepped in to ensure that all the rules were being observed. If those who came to help at Ground Zero had faced a similar obstacle, university studies about the best way to proceed would still be in their early stages, and the debris would remain untouched even now.

Rome was not destroyed by the barbarians. It destroyed itself:

> . . . the rising costs of armies, doles, public works, an expanding bureaucracy, and a parasitic court; the depreciation of the currency; the discouragement of ability and the absorption of investment capital by confiscatory taxation, the strait jacket of serfdom placed upon agriculture, and of caste forced upon industry: all these conspired to sap the material bases of Italian life, until at last the power of Rome was a political ghost surviving its economic death.[22]

These were the symptoms of the disease that destroyed Rome. If they are symptomatic also of what troubles modern America we do well to pay them heed. The United States cannot be saved from terrorism by expanding the powers of the central government. It can be saved only by setting individuals free to deal with the concrete reality of actual situations. □

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IDEAS ON LIBERTY
APRIL 2003

Who's Declaring War?

"You said we're headed to war in Iraq. I don't know why you say that. I'm the person who gets to decide, not you."
—PRESIDENT GEORGE W. BUSH

In the drive for war against Iraq, President Bush and the Congress have colluded to violate the U.S. Constitution. What Congress has committed at Mr. Bush's request is no less than an illegal delegation of the Constitution's war-declaring power. Both need to be called to account before they make further mockery of the country's basic law.

Two important constitutional principles must be understood. First, the Constitution (Article 1, Section 8) gives the power to declare war exclusively to the Congress. Second, Congress may not delegate its authority to another branch of the government. But that is exactly what the Congress did when it approved Mr. Bush's force-authorization resolution last year.

The resolution authorizes Mr. Bush to "use the Armed Forces of the United States as he determines to be necessary and appropriate in order to (1) defend the national security interests of the United States against the continuing threat posed by Iraq and (2) to enforce all relevant United Nations Security Council resolutions regarding Iraq." The key phrase is "as he determines to be necessary and appropriate." It would be consistent with the resolution for Mr. Bush to decide that it was neither necessary nor appropriate to use force against Iraq at all.

In other words, the Congress did not declare that a state of war exists between Iraq and the United States. On the contrary, the President was authorized to decide when and if a state of war exists. The resolution requires only that he "certify" that diplomatic efforts have failed before he uses force. Indeed, former House Minority Leader Richard Gephardt confirmed that Congress was not declaring war when he said, "we should deal with it [the Iraqi problem] diplomatically if we can, militarily if we must. And I think this resolution does that."

That is unconstitutional.

To see this point, it's helpful to consider how other presidents asked Congress for the authority to wage war and how Congress responded. Bear in mind that these requests came after overt attacks, not unsubstantiated supposed threats. What I wish to draw attention to is not the merits of these presidents' arguments, but the legal form of their dealings with Congress.

On April 2, 1917, after Germany had resumed submarine warfare and sunk American and other ships, President Woodrow Wilson went before Congress to seek entry into World War I. He began his message by invoking the Constitution, "I have called the

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Congress into extraordinary session because there are serious, very serious, choices of policy to be made, and made immediately, which it was neither right nor constitutionally permissible that I should assume the responsibility of making."

After detailing Germany's hostile acts against the United States, Wilson said, "With a profound sense of the solemn and even tragical character of the step I am taking and of the grave responsibilities which it involves, but in unhesitating obedience to what I deem my constitutional duty, I advise that the Congress declare the recent course of the Imperial German Government to be in fact nothing less than war against the Government and people of the United States; that it formally accept the status of belligerent which has thus been thrust upon it, and that it take immediate steps not only to put the country in a more thorough state of defense but also to exert all its power and employ all its resources to bring the Government of the German Empire to terms and end the war."

Four days later Congress passed a joint resolution, declaring, "Whereas the Imperial German Government has committed repeated acts of war against the Government and the people of the United States of America: Therefore be it Resolved . . . That the state of war between the United States and the Imperial German Government which has thus been thrust upon the United States is hereby formally declared; and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial German Government; and to bring the conflict to a successful termination all of the resources of the country are hereby pledged by the Congress of the United States."

Similarly, on December 8, 1941, the day after Japan attacked Pearl Harbor, President Franklin Delano Roosevelt went before Congress and said, "I ask that the Congress declare that since the unprovoked and dastardly attack by Japan on Sunday, December 7, a state of war has existed between the United States and the Japanese Empire."

That same day Congress, echoing their predecessors of 24 years earlier, passed a joint resolution, declaring, "That the state of war between the United States and the Imperial Government of Japan which has thus been thrust upon the United States is hereby formally declared; and the President is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial Government of Japan; and, to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States."

Note that Wilson and Roosevelt went to Congress only when they had decided that the time for diplomacy had passed and that only military action would suffice. Those congresses did not leave it up to the presidents to decide if they would engage in warfare against Germany and Japan. Acceding to the presidents' requests, they acknowledged existing states of war and authorized the executive to use the armed forces to bring it to a conclusion.

This is a far cry from what Congress did in 2002. Mr. Bush did not inform Congress that a state of war existed between Iraq and the United States. He did not detail Iraq's hostile acts against the United States (of which there were none). And Congress did not recognize an existing state of war. Instead, it delegated its constitutional responsibility to the President, as if to say: "You decide when and if there is a state of war. You decide what to do about it."

That violates the Constitution. □

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IDEAS ON LIBERTY
APRIL 2003

Telemarketing and Individual Rights

by Scott McPherson

Do Americans have a right *not* to be called on the telephone? According to new rules laid down by the Federal Trade Commission (FTC), they do. And as in all cases where the government manufactures "rights" seemingly out of thin air, this latest plan to forcefully interject itself into the middle of people's relationships is destined to be as morally and practically flawed as the rest.

The furor over telemarketing has been building for years. In response, at least 27 states have created, or are considering creating, "do-not-call" lists, which telemarketing firms are required by law to respect. Now, the federal government has decided to weigh in with the FTC's own nationwide list designed to shield consumers from unwelcome telephone sales. Even the White House joined the fray, releasing a statement saying, "Time with family is a precious commodity, and families should be given the tools they need to help prevent unwanted calls from telemarketers."[1]

Under the new guidelines, consumers who do not want to receive such calls would be able to place their names and telephone numbers on the national registry using the Internet or a toll-free number. They would have to renew every five years. Telemarketing firms that continue to call people once they've been put on the list would face a fine of up to $11,000 per violation.

Industry spokesmen claim the new rules will destroy their businesses and are actually contrary to what many consumers want. Some, like Direct Marketing Association president and chief executive Robert Wientzen, even argue against this new constraint on the grounds that it comes at "the substantial cost of restricting firms' protected speech under the First Amendment." Either way, according to a report in the *Washington Times* last December, "Telemarketers say . . . they are bracing for the worst." "It's extremely scary," said Tom Rocca, chairman of the American Teleservices Association, which represents 2,200 telemarketers. "The more people on that list, the more it will affect jobs and revenue." To make matters worse, the Federal Communications Commission (FCC) is contemplating its own "do-not-call" list under the 1991 Telephone Consumer Protection Act.[2]

The reaction from consumers is understandably mixed. "It's very annoying," one Chicago woman said about telephone solicitation. "You're like a prisoner in your own house not knowing whether to answer your phone or not."[3] This statement most assuredly reflects the sentiments of millions of people in this country. Still, the success of telemarketing as a sales tool also cannot be ignored. Telemarketers closed 185 million deals with consumers in 2001, to the tune of $296 billion, and sales to businesses raised

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even more revenue. This clearly shows that quite a few people indeed welcome the opportunity to be solicited by phone.

Yet the important question is not about which competing interest deserves to prevail. Telemarketers argue from the position that the necessity of protecting their industry justifies the continued use of this sales technique, or at least that they have a "right" of their own deserving protection. On the other hand, privacy and consumer-protection advocates refer to telemarketing as an intrusion, and speak almost as if the calls were a physical invasion. FTC chairman Timothy Muris seemed to liken the plight of consumers to a besieged populace. "Help is on the way," he said, referring to the coming "do-not-call" list.[4]

Despite all the arguments for and against this new regulation, the real issue at stake is not privacy, economic survival, or even free speech, but property rights. Somehow over the last century people have come to think of themselves as the *owners* of the telephone lines coming into their homes. They aren't. The payment made to a local telephone-service provider is for *rental*, not ownership, of the line. The phone company is the actual owner. Like cable TV or electricity, individual Americans trade with the suppliers of these highly coveted commodities under a contractual relationship of fee for service, not as purchasers of power, telephone, or cable lines.

The Right to Ask

When people invoke their "right" to not be interrupted by sales calls, they fail to realize that their complaint is not one to be handled by the government, but by, if anyone, the telephone company. No one has the right to demand that government regulators compel Burger King to take ketchup off the Whopper. They merely have the right to ask this for themselves. In a free, market-based society, businesses make money by serving their customers, and in that sense, the customer reigns. The extent of consumers' actual claim over business products, though, is determined by the terms of the contract negotiated between the parties concerned. It's highly doubtful that any consumer of telephone service has received a guaranty from his local phone company that sales calls will not be forthcoming.

How, then, could customers protect themselves from telemarketers? First, it should be understood that when someone gets a telephone, like a television, he is opening a portal to the outside world. The wonderful convenience represented by that often-overlooked fact is taken for granted today. Without a telephone it would take a healthy set of lungs to summon an ambulance. A telephone can also mean the sound of a loved one's voice from thousands of miles away at the touch of a few buttons. Simply put, without the telephone, an unbelievable number of the riches and pleasures of our creative society would be literally out of reach for most people. It is presumptuous for someone to enjoy the immeasurable advantages of a culture built around this and other inventions, while assuming that he should be able to exercise a line-item veto over any perceived drawbacks.

Even so, the marketplace will ultimately provide the kind of protection that people want from untimely telephone interruptions, and to some extent it already does so. The Direct Marketing Association began a private "do-not-call" list in 1985 for use by the telemarketing industry; it has 7.5 million subscribers. Another private firm, Illinois-based Private Citizen, Inc., assists consumers in removing their names from telemarketing lists.

For those who want to take more immediate action, Baby Bells are now offering "Privacy Manager," a service (for a small monthly fee) in which the phone company's computer intercepts any call that provides no caller ID data, requests identification, and then relays the information to the resident, who has the option of refusing the call, accepting it, or sending a computer message instructing that the telemarketer not call again.

Also available is the Telezapper, a tiny computer that hooks up to your phone and automatically "zaps" your number from the

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computer database of any caller using an auto-dialing system (popular among telemarketing firms).

Of course, caller ID allows us to know who is calling before we even pick up the phone, and answering machines permit calls to be screened. Most telephones now have a ringer-off or volume switch, which can be used during mealtime, rest time, or family time. As a last resort, one can just refrain from answering the phone—if it's important, they'll call back later.

Competition may also play an important role in the future of telephone solicitations. If the federal and state governments stay out of the way long enough, alternative telephone companies will begin to take root and provide real choices in local service. Service innovations would require that telephone companies enjoy absolute, unrestricted ownership of their respective lines. Regulations like the "do-not-call" list currently being implemented by the FTC only disrupt market signals that would transmit the need for innovations and hinder their evolution. □

1. "Government plans nationwide 'do-not-call' list," Associated Press, *St. Petersburg Times Online*, December 19, 2002.
2. William Glanz, "Consumers to get help avoiding sales calls," *Washington Times*, December 18, 2002.
3. "Government plans nationwide 'do-not-call' list."
4. Ibid.

On the Calendar at FEE . . .

May 12–17: FEE Seminar for Homeschool Students

In cooperation with TeenPact, FEE will host an intensive 5-day seminar for homeschoolers. For further information about this program, contact Greg Rehmke at FEE.

May 18–28: FEE Seminar for Pepperdine University Students

FEE will welcome students from Pepperdine University in Malibu, California, to Irvington-on-Hudson for a special program. Among the topics to be discussed: globalization, public policy, entrepreneurship, economic history, and money and finance.

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IDEAS ON LIBERTY
APRIL 2003

The Dubious Blessing of EU Membership

by Karl Sigfrid

At their recent top meeting in Copenhagen, the leaders of the European Union (EU) finally decided to accept ten new members by 2004. The countries to join the EU will be Estonia, Latvia, Lithuania, Poland, the Czech Republic, Slovakia, Hungary, Slovenia, Malta, and Cyprus. Most were under the Soviet Union's control during the cold war, and their entrance into the EU has been called historic. Europe is once again united after decades of forced separation between East and West. However, one might question whether EU membership is an appropriate symbol for the freedom that the ex-communist countries won when the Soviet empire collapsed. One might also ask whether a spider web of regulations from Brussels will bring the new members closer to Western Europe culturally and economically. To get a hint, we can look at what the EU has done to its current members.

Eight years ago I became a part of the European Union along with eight million other Swedish citizens. A slim majority of the people in Sweden had decided that we should be a part of Europe and put an end to living isolated with Norwegians and polar bears as our only allies. There were plenty of valid arguments for entering the EU. Most important were "The Four Freedoms" that allow all EU citizens to move their goods, their services, their money, and themselves across European borders without bureaucrats' asking questions. There was also the peace argument. The EU was once founded to prevent a new world war, and even if the recently reunited Germans seemed happy, we didn't want to take any chances.

As members of the EU we got what we expected. We can move freely within the union, and Germany has yet not attacked. Unfortunately, along with the freedom to cross borders we got a new layer of government doing its best to increase its powers at the expense of national governments, local communities, families, and individuals. As if the national parliaments didn't come up with enough suggestions on how to protect me from myself, I now have a European parliament consisting of 626 people trying to help me out. Since I became a part of the EU the parliament has voted to make me stop buying vitamin supplements, stop watching tobacco ads, and stop eating licorice pipes. Licorice pipes and chocolate cigarettes will make me start smoking, the parliament fears. While at it, the parliament also decided that the EU should register women with silicone breasts. How fighting "Baywatch" body ideals fits with the purpose of the institution remains to be explained.

As far as regulation-happy politicians are concerned, the EU is no different from any national government. What makes it a greater problem is that sensible politicians

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who normally oppose a growing government quietly accept the threat against individual freedom when it comes from Brussels. Many potential opponents of the growing powers of Brussels are stuck with a perception of the EU as a project for openness and free trade even though it has long since turned into something else. While there is no doubt that Europe, a continent consisting of many small countries, needs free trade and open borders, European nonsocialists must come to understand that the organization itself is ideologically neutral and that political institutions can be abused even when created for good purposes. The early ambition to prevent war and to open markets has now been replaced with the ambition to create a giant European welfare state.

The bigger and more numerous the EU institutions grow, the more difficult it will be to use peace as an argument for further expansion. Movement and trade across borders will likely contribute to greater tolerance for cultural differences, but what about the steps that the EU takes toward common standards and regulations? Will continent-wide regulations for how often to take a break at work bring us closer? A common tax level? A European currency? EU standards that regulate the shape of cucumbers and the size of strawberries? What about a central policy for agricultural subsidies?

Agricultural subsidies make up 45 percent of the EU's total budget. Every year, the system gives EU farmers more than $30 billion. Poland has made clear that it wants full benefits for its farmers as soon as it enters the union. This raises questions about what the primary purpose of the Polish membership is. Prosperity through free trade or easy money through the EU's welfare systems? If a share of the EU budget is the reason for new countries to join, they will pay a high price for the short-term benefits. In addition to the bureaucracy tied to the agriculture subsidies, detailed labor regulations make the job market less flexible and increase unemployment. New standards for consumer goods will force industries to go through costly changes in their production processes.

Regional Redistribution

The political ambition to standardize Europe has resulted in an expensive regional redistribution system. The commitment to pump money into poor regions would ruin the union's economy if the new ex-communist member states were to get subsidies on the same conditions as current members. This is why the new members will gradually grow into the system rather than being part of it from the start.

A system that is too badly designed to accommodate all EU members is a funny symbol for a united Europe. On the bright side, problems with regional redistribution now get the attention of the European leaders. Net contributors to the system, such as Germany, Sweden, and the Netherlands are likely to demand cheaper benefits as the number of beneficiaries grow. In the short run, less regional redistribution through the EU will strengthen national governments. In the long run, corporations and productive citizens will benefit from independent nations that compete on an open market. □

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IDEAS ON LIBERTY
APRIL 2003

Decommissioning California's Coastal Tyranny

by Steven Greenhut

A California Superior Court ruling a year ago was an incredible bombshell that should have had defenders of private property rights rejoicing and California environmentalists gnashing their teeth. Yet the decision, declaring unconstitutional the California Coastal Commission, received surprisingly little media coverage and sparked only muted celebration and outrage at the time.

The decision was treated as a bizarre quirk that would no doubt be overturned at the appellate court. The reaction shows just how far we've gone down the road of accepting as permanent even the most noxious government agencies.

To those unfamiliar with it, the Coastal Commission is California's state agency that oversees the development of property along the coast, from the Oregon to Mexico border. Its authority over property, private and public, extends from three miles out to sea to as much as five miles inland, although in certain areas its authority only goes a few hundred feet east of the shoreline.

Within these Rhode Island-sized boundaries, including some of California's most sought-after and populated areas, the commission has near-dictatorial powers to approve, reject, or reform any development proposal. Created by initiative in 1972 and affirmed by legislative edict four years later, the commission has been as controversial as one would expect from a government agency with unchecked power. Those who share its values, goals, and messianic sense of purpose adore it and see it as a template for "guiding" development throughout the state. Those who cherish property rights and freedom despise it, as do many local government officials frustrated by its ability to trump local decisions. (Even "liberal" Malibu residents battled the commission after it trumped a local plan for regulating the coast in order to impose one of its own liking.)

Yet the Sacramento Superior Court's ruling—based mainly on separation-of-powers issues—was largely shrugged off. Then a funny thing happened. Last December the California Court of Appeal in the Sacramento district upheld the decision. Yes, the California Coastal Commission is unconstitutional, and many people now believe the decision will withstand the likely appeal to the state's supreme court.

The courts ruled that the makeup of the commission formed the heart of its constitutional problem. It has 12 members, with four selected by the governor, four by the speaker of the Assembly, and four from the Senate Rules Committee. All members can be removed for any reason at any time by those who appointed them.

"The flaw is that the unfettered power to remove the majority of the commission's voting members, and to replace them with others, if they act in a manner disfavored by

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the Senate Committee on Rules and the Speaker of the Assembly makes those commission members subservient to the Legislature," the appellate court ruled. "In a practical sense, this unrestrained power to replace a majority of the commission's voting members, and the presumed desire of those members to avoid being removed from their positions, allows the legislative branch not only to declare the law but also to control the commission's execution of the law and exercise of its quasi-judicial powers."

Environmentalists and legislature Democrats who are enamored with the commission can't understand what the fuss is about. They view the makeup of the commission as a clever means to share powers among different branches of government, and claim the court's ruling is an easily fixed, technical one.

But that "technical" problem goes to the heart of the American system of government. Legislative branches of government write laws, executive branches enforce them, and judicial branches adjudicate disagreements. When one agency has all three functions it is tyrannical. That was the view of America's founders, if not the current California Legislature.

If nothing else, the Coastal Commission is a tyrannical agency. Even its defenders basically admit as much, seeing such overwhelming power as a necessary means to check the ability of developers to turn the California coast into wall-to-wall concrete. The commission is the arbiter of the vague coastal protection provisions of the coastal act. Its staff relishes its ability to hammer developers, homeowners, and farmers with cease-and-desist orders for anything deemed harmful to the coast.

The appellate court pointed to Article III, section 3, of the California Constitution: "The powers of state government are legislative, executive and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." There's no doubt, the court said, that the commission has various functions. It adopts or amends by a vote of its appointed members rules and regulations, as a legislative body would do. Like an executive agency, it contracts services, it undertakes investigations, it reviews the coastal programs of local governments for compliance with the coastal act, and it can refuse to approve those plans. "These duties in the interpretation and implementation of the Coastal Act are the very essence of the power to execute the law," according to the court.

So the commission writes, interprets, and enforces the law, and it also has quasi-judicial powers in granting and denying permits, ordering cease-and-desist orders, and reviewing coastal plans.

The Coastal Commission argued that the Legislature hasn't actually tried to control the commission so there is no constitutional problem with the appointment setup. The court: "[The plaintiff] does not need to demonstrate that the legislative appointing authorities have attempted to interfere with the commission members' execution of the Coastal Act. It is the commission members' desire to avoid removal—by pleasing their legislative appointing authorities—which creates the subservience to another branch that raises separation of powers problems."

The commission's defense was laughable given that its structure (and the very existence of such a powerful political body making decisions that are worth millions of dollars to involved parties) breeds corruption. Such corruption became publicized before the November election when a court unsealed records from Beverly Hills real-estate agent Mark Nathanson, who was convicted in the early 1990s of receiving more than $700,000 in bribes from developers to approve projects when he served as a coastal commissioner. Nathanson implicated then-controller and now-governor Gray Davis in a fund-raising scheme—something Davis denies and voters ignored. In other instances, commissioners were replaced with the apparent goal of passing certain development projects that legislators wanted.

Genesis of the Case

Ironically, it wasn't a big developer who filed the lawsuit that knocked out the com-

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mission. It was a French marine biologist and conservationist named Rodolphe Streichenberger. A decade ago, Streichenberger and his Marine Forests Society began an experiment to improve sea life off the Newport Beach coast.

"Used tires—not toxic when immersed in sea water—were attached in long rows and moored to the sandy bottom," wrote David Stirling, an attorney with the Pacific Legal Foundation, which filed an amicus brief on Streichenberger's behalf. "Floating plastic tubes were connected to the tires, forming vertical columns. Mussels and seaweed were then planted within this structure. In time, the ocean floor's tidal movements partially buried the tires, while the mussels, seaweed and other marine organisms attached themselves to the tires and plastic pipe, thus generating the colonization process." The process worked, attracting an impressive array of marine life around the artificial reefs, but it sparked the ire of the Coastal Commission which, Stirling notes, "in its San Francisco headquarters was growing increasingly intolerant of Streichenberger's 'different' ideas about ocean habitat restoration." Staff members—with no need for approval from elected members—issued a cease-and-desist order. With little financial support, Streichenberger filed a lawsuit against the commission.

Not surprisingly, the environmental movement has been downright scornful of this unusual conservationist who has devoted his life to promoting actual environmental improvement rather than to political activism. As Stirling pointed out, environmentalists tried to portray his experiment as the equivalent of dumping garbage into the sea, as if there were anything harmful about what he was doing or as if he were nothing more than a common polluter.

Now that Streichenberger has scored this unexpected court victory, the official line is to depict him as a tool of big developers. Yet Streichenberger told me in January that only after his first success in court did he receive some minor contributions from the building industry. "They [developers] are cowards," he said. "One developer said to me, 'you have nothing to lose. We have everything to lose.' These people on the commission have the power to ruin anyone in California."

"I myself am an environmentalist," Streichenberger said. "But these people have kidnapped the environmentalist movement. They are just people who are social engineers, radicals with their 1960s ideas. But socialism has failed and they have to find something else. So they ride this horse. . . . These are people who simply catch power through the law."

Few politicians in California would dare to describe the agency that way, but if anything Streichenberger is being too charitable. The Coastal Commission's elected members vary in outlook, although they lean heavily in the environmental direction. But the staff—and this is a staff-driven agency, whose decisions and policies largely reflect the preferences of its executive director—is run by a left-wing ideologue, Peter M. Douglas, who cowrote the 1972 Coastal Commission initiative and helped form the 1976 coastal legislation.

Douglas is surprisingly upfront about his beliefs, which suggest that society's laws should revolve around environmental protection rather than freedom.

"Californians have evolved an emotional, spiritual and enduring bond with the coast and coastal ocean: a bond that is at once mystical and pragmatic," Douglas said in 1997 before the California Chapter of the American Planning Association in Monterey. "It is rooted in the power of land's end to inspire renewal of body and soul and in its magical ability to give expression to a seemingly boundless array of natural and human artistry. It derives as well from the coast's earthly venue as a place to live, work and play."

Anointed Planners

This mystical nature of the ocean, of course, cannot be left to the wiles of private enterprise or even to local governments. It must be left to planners, who "adjusted private uses of land, air and water in a manner protective of public environmental interests

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and values at some not insignificant cost to individual rights and desires."

But there's a threat, Douglas explained. "Regrettably, something extremely corrosive has been injected into our social being and the body politic that has eroded our appreciation of the importance of collective well-being. And nowhere is this erosion of support for community interests more dramatic and of significant long-term consequence, especially to those of us in the field of environmental stewardship, than in the national debate over private property rights."

He insists that he favors private property rights, but explains that the budding property-rights movement is the work of wealthy special interests who exaggerate rare cases of government abuse. He proposes a solution to the problem of courts that insist on interpreting property-rights law in favor of property owners: "So unless we amend our national constitution to give Americans a constitutional right to a high 'quality' of life (as is the case in India) or to give standing and protection to the environmental commons of the country, it is the courts that will be the arbiters of the debate over property rights and the protection of environmental values."

Yes, far better to live in India, with its notoriously high (and government-guaranteed) standard of living, than in America where retrograde judges might rule in favor of property owners.

This would be scary stuff from your garden-variety leftist professor, but it is from the man with nearly dictatorial powers to determine what people get to do with their own property along the California coast. Douglas is clear about his messianic mission: "As I stated before, the coast, like any coveted reach of geography, is never finally saved. It is always being saved." He even feels sorry for himself as he goes about saving the earth: "It is not easy being in government these days. A cynical, shortsighted and self-centered segment of the public seems incapable of appreciating the good work, dedication and job commitment demonstrated by public employees every day."

We not only have to live under the dictates of men such as Douglas, but we need to thank them as they trample on our rights. This gives one an idea why the Coastal Commission is loathed by so many people.

What Now?

The sensible solution to the commission's constitutional problems is obvious, but unlikely. How about restoring property rights and allowing coastal-development decisions to be based on the tried-and-true principles of freedom and ownership? I can dream, can't I?

Environmentalists insist the commission will emerge from this conflict more independent and committed to environmental protection than ever. They foresee a commission with less oversight by the legislature, which they hope would mean decisions even more in tune with their environmental theology.

That's possible. But the court is watching, and Streichenberger probably will have an easier time raising money for continued legal action if the commission is changed in less-than-satisfactory ways.

"The Legislature is looking for a cosmetic fix," Streichenberger said. "They want the same power, the same ideology, the same abuses. They hope so but it's not going to happen. The court is not going to be happy with a cosmetic fix by the Legislature."

The battle over the Coastal Commission is the latest battle between the traditional view of private property, in which owners are entitled to use of their land provided they don't do anything harmful to others, and the collectivist idea that puts experts in charge of every decision in the name of environmental protection.

The latter way of deciding development policies reminds me of a recent conversation I had with an acquaintance, who advocates a new way of making policy decisions based on saving the earth rather than private property.

"How exactly would we build a world based on environmentalism?" I asked him. In his view, the Constitution would have to give way to commissions of experts who would weigh the costs and benefits of any action. This is the stuff of dystopian novels,

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where a society similar to our own has degenerated into a totalitarian netherworld.

I can imagine the plot line now. An individual, who wants to build homes on his own tract of land, finds himself in a bizarre and evil world in which he spends his entire adult life going from one panel to another amending his plans to their desires, then going back to square one after one insane problem after another, such as the discovery of a rodent some bureaucrat decides is endangered, or the declaration that a rut in the land caused by a tractor really is a precious wetland.

Unfortunately that scenario is based closely on true stories involving local regulators and the Coastal Commission. It's not just big developers who end up in this Kafkaesque totalitarian world. Small property owners who live near the beach must get commission approval for fences and vegetation, or must trade away property rights to get approvals for small additions.

Welcome to the California Dystopia. Our only hope is that, after three decades of the commission's abuse, the courts are now willing to restore some sense to California coastal-development decisions. □

What's New at FEE?
Check www.fee.org

We are adding new features each month! Our two latest:

- **Serialization of Leonard E. Read's *Elements of Libertarian Leadership*—a classic that has been out of print for more than 20 years**
- **Monthly book recommendations by FEE's staff**

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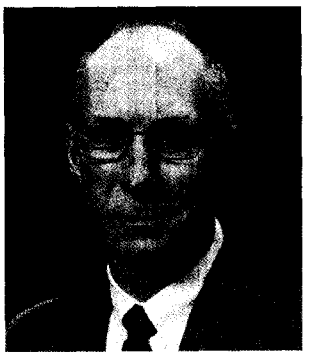
IDEAS ON LIBERTY
APRIL 2003



How Politics Ruined the Northwest Salmon Fishery

When white men began to move into the Pacific Northwest in large numbers in the second half of the nineteenth century, they found numerous aboriginal tribes whose economies centered on a flourishing salmon fishery. The natives took advantage of the salmon's anadromous life course. These fish are spawned in the gravel beds of mountain streams. As juveniles, they migrate down the rivers to the ocean, where they live most of their adult lives. After two to six years (depending on the species), they return to the exact place of their origin to spawn and die. To capture the returning fish, the Indians employed a variety of fishing gear—traps, weirs, baskets, dip nets, spears, hooks and lines, gaffs, and assorted entangling nets and seines—where the runs became concentrated near the shore or in the rivers. Because the Indian fishers let the fish come to them, rather than sallying forth to catch still-dispersed fish in the open waters, they were highly productive.

The aborigines possessed property rights over the fishing places at which they captured the returning salmon. As described in a landmark federal court decision, "Generally, individual Indians had primary use rights in the territory where they resided and permissive use rights in the natal territory (if this was different) or in territories where they had consanguineal kin. Subject to such individual claims, most groups claimed autumn fishing use rights in the waters near to their winter villages. Spring and summer fishing areas were often more distantly located and often were shared with other groups from other villages. . . . Control and use patterns of fishing gear varied according to the nature of the gear. Certain types required cooperative effort in their construction and/or handling. Weirs were classed as cooperative property but the component fishing stations on the weir were individually owned."[1]

When the whites began to exploit the salmon resource, they improved the harvesting devices, relying on the Indians' sensible approach of letting the fish come to the fisher. The whites constructed bigger, more productive "fish traps," elaborate arrangements of netting by which the salmon could be induced to swim into small, nearly inescapable enclosures from which they could be scooped out at the fisher's convenience at low cost. Along the Columbia River, white fishers also constructed huge automatic "fish wheels," using the current to turn rotating scoops and often obtaining an enormous catch at low cost per fish.

As the fishery became more exploited, however, the whites began to disregard the productive system the Indians had used for centuries as well as the fishing rights that underpinned it, jeopardizing the survival of the resource. Using long gillnets and large purse seines, mobile fishers proceeded to "get in front of" the established catchers as

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the salmon proceeded back to their spawning places. Although such fishing methods entailed greater cost per fish caught, they had the advantage of getting the fish first, before the salmon had reached the places where they might be harvested by the more productive stationary gear, such as traps or wheels. (Elsewhere, I have analyzed this socially wasteful "interception externality."[2]) The gillnetters got in front of the traps; the purse seiners got in front of the gillnetters; and finally the trollers, using an extremely unproductive hook-and-line technique, got in front of the purse seiners, ultimately ranging far out to sea, chasing the dispersed fish stocks for hundreds of miles.

Coming into conflict, the various gear groups resorted to the Oregon and Washington legislatures. Each group tried to gain an advantage by getting the lawmakers to subject competing groups to legally prescribed technical constraints and to discriminatory taxes and license fees. The legislators might well have given priority catch rights to the highly productive fishers in the terminal fisheries—the Indians and the white trap men, wheel men, and beach seiners—rather than to the relatively unproductive gillnetters, purse seiners, and trollers. Unfortunately, the legislators followed a more counterproductive course. By a series of licensing, tax, and regulatory measures, they restricted all the competing groups, limiting the dimensions of the gear and the times and places of fishing.

In 1926 the gillnetters of Oregon placed on the ballot an initiative to outlaw all fish wheels in Oregon waters and all beach seines and traps on the Oregon side of the Columbia above the Cascades. Supporters of this measure complained that "a few fishwheels took as many fish in 24 hours as the average gill-net fisherman took in 4 years of labor," whereas opponents asked "by what American principle of fair dealing could the takers of 88 percent of the fish demand confiscation of the large investments in equipment, factories, and labor of those who took less than 7 percent of the fish."[3] The voters approved the initiative by a margin of more than four to three, and the fish-wheel owners lost their court appeal challenging the initiative's constitutionality. Thus the magnificently productive fish wheels ceased operation in Oregon forever. In 1927, wheel owner Frank A. Seufert, fuming over his capital loss, painted in large letters on the roof of a barn near his upriver cannery:

TO BUILD THIS BUSINESS IT TOOK 47 YEARS.
THE INITIATIVE LAW OF OREGON DESTROYED IT IN ONE DAY.[4]

Washington State Follows

Washington followed Oregon's lead. In 1934 sport-fishing interests, gillnetters, purse seiners, and trollers joined forces in placing on the ballot an initiative that, among other things, would outlaw fish traps and wheels in Washington waters. Voters approved the initiative by a margin of more than five to three, and the courts subsequently rebuffed attempts to have the measure declared unconstitutional. Henceforward, with trivial exceptions, fixed harvesting gear was outlawed in Washington.

By banning the stationary gear and by means of many other restrictive statutes, regulations, and court rulings stretching over more than a century, Oregon and Washington ultimately reduced productivity in the salmon harvest to a small fraction of what it had been when the whites first entered the fishery in the late 1800s.[5] □

1. *United States v. Washington*, 384 F. Supp. 312 (1974), at pp. 352, 353.
2. Robert Higgs, "Legally Induced Technical Regress in the Washington Salmon Fishery," *Research in Economic History* 7 (1982), esp. pp. 60–63.
3. Statements from the official voters' pamphlet, as quoted by Ivan J. Donaldson and Frederick K. Cramer, *Fishwheels of the Columbia* (Portland, Ore.: Binfords and Mort, 1971), p. 112.
4. Photograph in Donaldson and Cramer, p. 112.
5. For many details, see Higgs, pp. 55–86.

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IDEAS ON LIBERTY
APRIL 2003

The Idiocy of "Smart Growth"

by Barry Loberfeld

One of the more obnoxious (and, frankly, dangerous) trends here on Long Island is the growing number of "grassroots" activists who've taken it upon themselves to inform the "less socially aware"—meaning everyone else—that our fair isle is suffering (yes, *suffering*) from "too much development": too many warehouses and office buildings, too many cars and highways, too many golf courses, too many strip malls (a particularly favorite target, for some reason), too many new neighborhoods, and—the root of all this evil—too many *people*. We are sacrificing "the environment"—our trees, trails, ponds, blueberries, warblers, and tanagers (I had to look that last one up)—to this "too much development," to the "urbanization of the suburbs." Pledging themselves to "act locally," these self-styled "progressives" are petitioning their county legislature (Big Brother's little brother) to step in and—as if normal community growth were a felony offense—put a stop to any further development, an agenda that is ridiculously dubbed "Smart Growth."

Now it seems to me that this arrogant presumption suggests its own modest proposal: If we are *already* suffering from "too much development," which implies that these activists know (and have the right to determine) exactly how much development the rest of us should have, then shouldn't we demolish some of this development in order to descend to that specific (though as-yet unspecified) level? Why not send in the wrecking crews to raze the strip malls and even the major ones—and then attempt to reforest the area? Why not turn the Roosevelt Field Mall into blueberry fields forever? Let's bulldoze all that new housing and allow Mother Nature to reclaim the land for the warblers and the tanagers. Instead of merely opposing expansion of Route 25A, why not go ahead and close it off to everyone? Those who wish to travel can bike the trails or, even better, walk.

But the really great thing about all this destruction is how it will solve the people problem ("population congestion") by necessarily forcing the flight of Long Islanders of every stripe, from Mexican day laborers to the "quality of life" protest groups that routinely demand their deportation.

Those on the left look at development the same way their right-wing counterparts look at immigration: It was fine before, but not anymore. Both scramble to close the gates behind them—and to hell with those on the other side. Incredibly, they imagine that they can freeze time or even turn back the clock to a "more preferable" period (for them, that is). The fact is, property—and freedom—will always attract new people, which means new development, which in turn attracts more people. It is the history of human civilization, and it will be the history of the human future. We cannot sacrifice that future to a conception of "the environment" that, too obviously, signifies only all that is *not* human. □

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IDEAS ON LIBERTY
APRIL 2003

Germany: From the Market to Socialism—and Back?

by Norman Barry

Germany is still the third biggest economy in the world, but like the second (Japan) it is suffering from rising unemployment (approaching four million or 10 percent of the workforce), massive capital flight, a growth rate approaching zero, workers who were once a legend for productivity but who are now over-educated and reluctant to do a full day's labor without consulting a rule book of "rights" (a law restricting shopping on Saturday afternoon has only just been repealed), and enormous present and future welfare obligations.

It is fashionable to blame the current crisis on macroeconomic issues, such as adopting the Euro and fixing the country to high interest rates enforced by the European Central Bank, a restraint on budget deficits (imposed, ironically, on Europe, at the insistence of Germany herself), and the foolish one-to-one swap of the worthless East German currency with the Deutschmark at reunification. These are important, but Germany's travails predate all this, and her fundamental structural problems would have eventually generated a national economic crisis whatever the monetary regime.

The problems can only be understood by going back to the founding of the West German republic after World War II. Under Allied occupation the country was rendered unproductive by a hopeless planning system and an unusable monetary regime (the Reichsmark). The country faced starvation, with women forced into prostitution and people begging on the streets or hunting for food in rubbish bins. The Allied occupying forces, surrounded by Keynesian advisers, knew something had to be done but could only think of reforming the monetary system. The country was saved in 1948, however, by an obscure economics professor, untainted by Nazi connections, who held a fairly minor post in the economic administration. He was instructed to effect the change to the Deutschmark, but this man, Ludwig Erhard, did more than this. Under the protection of monetary reform he repealed overnight almost all the constrictions and regulations on pricing and output that had brought the economy to its knees.[1] The Nazis hadn't socialized the economy but had made it inefficient; and it was made unworkable by the occupying powers.

With the exception of one U.S. military commander, the Allies were opposed to Erhard's free-market reforms. One American opponent in Germany at the time was John Kenneth Galbraith, who in a famous newspaper article said that wholesale marketization had never worked and would fail now. This must have been the first of his many legendary mistakes, for very quickly the West German economy recovered.

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It is certainly true that the reforms were initially unpopular in the country. Conveniently, the first elections in the postwar Republic were held in 1949, after the reforms had taken effect. The conservative Christian Democrats (CDU) were not keen on them, but went along; the Social Democrats (SDP) were still Marxists; and the influence of Catholicism was a permanent obstacle to the individualism of the godless market. The German Free Democrats have always been the most free-market party, but their pro-capitalist credentials have always been diluted by support for some statism and agricultural protectionism.

To the chagrin of almost everybody important, the reforms worked. Under the wise stewardship of Erhard, who had become finance minister, West Germany made a remarkable recovery. It had the freest market in Europe, outside Switzerland, and within a decade had approached the top of the economic league. While Britain was struggling under heavy nationalization and extensive and costly welfare, West Germany prospered. Chancellor Konrad Adenauer was probably skeptical of the market, but was too interested in world affairs to bother about economics, so Erhard had pretty much a free hand.

Erhard revitalized the economy. In those halcyon days public spending was kept well below 30 percent of GDP. (It is now approaching 50 percent.) By 1959 the socialists had formally abandoned Marxism and became, for a short period, enthusiastic capitalists. Indeed, an SDP finance minister, Karl Schiller, resigned from the grand coalition (CDU and SDP) on a free-market issue in the early 1970s. Now it has slipped back into old statist ways. Indeed, a dominant figure in Social Democratic politics is Oskar Lafontaine. He had been finance minister in Gerhard Schroeder's government and was even too left-wing for him. Lafontaine was forced out of office and immediately wrote a book called *The Heart Beats on the Left*.

However, the consensus that had emerged under Erhard was pro-market, the opposite of that social agreement about policy that Margaret Thatcher did so much to destroy in Britain. (Conservatives before her were Keynesian, welfarist, keen supporters of the National Health Service, and in no mood to break up the socialism that the 1945–51 Labor Government had introduced.)

Origins of the Current Crisis

So, is the solution to Germany's current sclerotic economy to be found in a new Erhard? Yes, but before we go looking for one, we must understand how it all went wrong, for the ultimate failure of the Erhard program to survive the vicissitudes of democratic politics contains timeless lessons. The ideological foundations of the Erhard revolution contained two elements that in the beginning produced harmony (albeit precarious). But ultimately one triumphed—and it was the wrong one. Hence, Germany's current difficulties.

Erhard's system drew upon two doctrines: *Ordoliberalism*[2] and the *Sozialemarktwirtschaft* (social market economy).[3]

Ordoliberalism was clearly free market, and its founder, Walter Eucken (who tragically died in 1950), had produced in the war years a coherent theory of the order of a market economy. It had a minimal state and an efficient legal system designed to preserve freedom. However, monopolies and cartels were forbidden, partly on the grounds that such things had enabled Hitler to run a war economy without having to nationalize anything. Austrian economists were critical of this aspect of the reforms. (Nevertheless, F.A. Hayek was a friend of Erhard, who was an early member of the Mont Pelerin Society.) Ludwig von Mises was especially scathing about the action taken against cartels, for he believed that a free market would break them up and those that survived would have a market rationale.[4] However, other economists sympathetic to the market approved of the anti-cartel measures. The *Ordoliberals*, who believed that cartel agreements violated German law, had long criticized an 1897 court decision upholding a private cartel arrangement that sought to keep competitors out.

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It is probably true that the fear of cartels was exaggerated and their pre-war longevity was largely a function of protectionism. Postwar anti-cartel action was too much influenced by American antitrust legislation.

There was a determined eschewal of Keynesian demand-management policies and a fear of monetary disorder and of trade-union power. These last two were thought to be a likely result of Keynesianism. The market was ultimately self-correcting, and the central bank should be independent.

The Bundesbank was a big factor in West Germany's revival. It followed a more or less Chicago policy of closely watching the monetary aggregates so that the country did not repeat the hyperinflation of the 1920s. One of the Bundesbank's final gestures was to oppose the aforementioned monetary swap with the currency of the former East Germany. It is now no more than a branch office of the European Central Bank, and the once-beloved Deutschmark is becoming a distant memory. Still, even before Erhard's death there had been ominous signs: committees of "wise men" were set up to oversee macroeconomic policy. Keynesianism was creeping in.[5]

In contrast to the *Ordoliberals*, the social-market thinkers, one of whom, Alfred Muller-Armack, was a prominent member of Erhard's government, had a much broader agenda. While everybody, including the *Ordoliberals*, accepted Bismarck's welfare state, with its pensions and health and unemployment insurance, the Scandinavian-type system was nevertheless rejected. However, in the 1960s costly welfare reforms, including a potentially ruinous extension of the pension system, produced exactly that. The social element in the market economy gradually displaced the market.

The original reluctance to embrace full-fledged welfare was for two reasons: it would have a deleterious effect on incentives and would undermine the moral basis of a liberal society (free and independent individuals). But the social-market people were too relaxed about this; they actually believed that the new West German order would produce enlightened persons who would not need the normal incentives of the market to produce responsible behavior.

How wrong they were. Germans are normal people. They won't work unless they have to, and now it is often beneficial not to get a job and rational to stay in school until age 30. They have relished the Scandinavian welfare state that has been gradually introduced. It is now technically irrational to work. Unemployment benefits are too good: and since these are partly financed by employers' contributions to Social Security, capitalists are reluctant to hire new workers. (Trade-union power makes it difficult for employers to implicitly subtract these contributions from wages.) German nonwage labor costs are now the highest in the world, reaching $20 an hour in many cases. In some respects German welfare is worse than Scandinavian. At least in Sweden there is a work test before a young person receives welfare. Also, in that country corporation taxes are relatively low so that the inward flow of capital is not discouraged. Despite protestations that it would discourage the capital inflow, one of the first acts of the Social Democratic government, elected in September 2002, was to raise company taxes.

German Industrial Consensus

The much-vaunted consensus in the Erhard economy worked well for some time. West Germany was not disfigured by the strikes that afflicted Britain before Mrs. Thatcher. Unions were fully integrated into the market, had mandatory representation on the supervisory boards of companies, and deliberately abjured the confrontational tactics of their British counterparts. There were few statutory limitations on takeovers (though a long-standing rule forbidding any one person voting more than 10 percent of his stock has only recently been repealed), but there was a social disapproval of corporate raiders (foreigners especially) who might threaten jobs. Thus the industrial reorganization that a country must go through if it is to remain competitive (Schumpeter's "gales of creative destruction") has been deterred by the too-much-admired consen-

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sus. German banks, unlike those in the United States and Britain, are stockholders in German companies and often combine with other "stakeholders," especially trade unions, to resist change. Banks also vote the stock of private shareholders at board meetings.

Erhard became Chancellor in 1963, but he was unsuccessful and resigned in 1966. The system he had established was clearly breaking down some time before his death (1977). He had only used the phrase "social market" to assuage his international advisers and was probably closer to the *Ordoliberals*. But he was never a party man, and he failed to impress on the Christian Democrats the lessons of a free economy. Helmut Kohl gave a laudatory speech in 1997 at the celebrations marking the 100th anniversary of Erhard's birth. But as a free-market critic said, "He would not have understood the real doctrine of Erhard and if he did he certainly would not have agreed with it."

The social-market thinkers have won. Germany has a vast welfare state, including an almost completely unfunded pensions system that will impoverish future generations and a regulatory and tax system that offers no incentives to anybody to invest in the country.[6] Its admired consensus now is a barrier to innovation and change. We saw that in the recent economically rational hostile takeover bid by Krupp for Thyssen. The "stakeholder" groups got together and turned it into a tame merger. The first condition was that there should be no job losses. It took the huge foreign bid by Vodafone in its capture of Mannesmann to presage a relaxation of the stranglehold of "stakeholder" groups on German industry.

Perhaps the biggest mistake of both the *Ordoliberals* and the sensible social-market theorists was the failure to make their reforms long-lasting. Representative assemblies subject to little restraint are not going to quell the voracious appetites of pressure groups, and they always answer to electorally effective minorities. It is clear that the mass of the German people would like a change in the system. Yet it is the parties that are now cartelized, and it is in their common interest to preserve the present order. Germany has a nominal federal political system, but the central government's capture of large areas of public policy, especially welfare, has prevented jurisdictional competition between *die Länder* (the component states) in the offer of rival agendas.

Erhard was effective because of the chaos caused by a world war. The benign but inefficient current economic regime will be even harder to reform, and to make an Erhardian economic system permanent will be much more difficult. One important lesson the rest of the world can draw from the German experience is that there is no "third way," "capitalism with a human face" or market welfarism: there is either the real thing or, even for rich countries, incipient poverty. □

1. For the historical background see Alan Peacock and Hans Willgerodt, *German Neo-Liberals and the Social Market Economy* (London: Palgrave Macmillan, 1989) and *Germany's Social Market Economy: Origins and Evolution* (London: Palgrave Macmillan, 1989).

2. See Norman Barry, "Political and Economic Thought of German Neo-Liberals," in Peacock and Willgerodt, *German Neo-Liberals and the Social Market Economy*, pp. 105–24.

3. See Norman Barry, "The Social Market Economy," *Social Philosophy and Policy*, vol. 10, 1993, pp. 1–25.

4. Ludwig von Mises, *Human Action* (New Haven, Conn.: Yale University Press, 1963), p. 723.

5. Norman Barry, "The Political and Economic Thought of German Neo-Liberals," pp. 121–22.

6. Interestingly, Britain has a much less serious pension problem because it is partially privatized, but a much more critical health problem since, unlike Germany's, it is almost completely nationalized. The two countries could learn from each other.

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IDEAS ON LIBERTY
APRIL 2003

Neutrality Agreements: Bid for Union Power

by David Denholm

All across the land organized labor is using political influence to push for public policies that facilitate imposing unionism on employees. One such policy requires employers doing business with government or participating in a government-sponsored program to sign so-called neutrality agreements.

The essence of a neutrality agreement is that the employer will say and do nothing to discourage employees from seeking union representation. An Illinois law mandating a neutrality agreement for anyone who contracts with the state to provide services to the disabled defines it as "an agreement by a contractor or grantee not to participate in or request or otherwise seek to influence, either in writing or orally, the decision of its employees, or any of them, to be represented or not to be represented by a labor organization."

A typical provision in a neutrality agreement reads, "The Company agrees to refrain from making negative public statements concerning the Union and any [union] officer, representative or member."

Neutrality agreements are not in the general interest and certainly not in the interest of the most important people affected by them—employers and employees. The wrongness can be clearly seen by examining the nature of employment. There are two parties to the employment relationship: the employer and the employee. Few employment-related decisions employees make are as important as whether to be represented by a union. It is likely that the employer will have information employees ought to know about this decision. Neutrality agreements make it impossible for employers to provide this information.

Most neutrality agreements also contain a provision granting union recognition on the basis of what is known as a "card check" election. In a card-check election unions gain recognition on the basis of signed cards rather than by a secret balloting. These elections compound the injustice of neutrality agreements by denying workers the vote on whether to be represented by a union.

The unions contend that card-check elections are necessary because employers use threats and intimidation to influence the results of government-supervised secret-ballot elections. They conveniently choose to ignore that unions are notorious for using subtle forms of moral suasion, which are frequently neither subtle nor moral, to obtain signatures on authorization cards.

That authorization cards are not a reliable indicator of employee sentiment is demonstrated by several studies showing that unions lose most elections, even when a narrow majority of workers sign authorization cards.

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The Decline of Unionism

Neutrality agreements are an insult and injustice to employees. They are a desperate attempt by unions to use their political power to shore up their sagging fortunes.

Unionism has been declining for more than 50 years. The unionized percentage of the labor force has fallen from about 30 percent in the mid-1950s to less than 14 percent in 2001. The extent of the decline of unionism in the private sector has been masked by the growth of unions in public employment.

In the mid-1950s unions represented almost 40 percent of employees on private payrolls. By 2001 that figure had fallen to 9 percent. During the same time, unionism among public employees increased from almost 11 percent to more than 37 percent.

Even though the size of the workforce has more than doubled since the mid-1950s, the number of union members has actually declined by more than a million. Because of the increase in more politically active public-sector unions, however, unions have remained a powerful political force. As membership declines, union officials have emphasized using political pressure to establish public policies they believe will allow them to organize more effectively.

By and large, the working people of America have rejected organized labor's class-warfare, us-against-them approach to employment relations. The majority of employees have chosen not to be represented by unions. A 1999 Gallup poll found that of those not represented by a union, only 21 percent would like to be. Even the AFL-CIO's own public-opinion surveys find that the majority of workers don't want union representation.

This conclusion is confirmed by the results of elections conducted by the National Labor Relations Board (NLRB). Even though organized labor says that it is putting more emphasis on organizing, the number of NLRB elections has been declining in recent years. Despite this decline, the NLRB still conducts thousands of union-representation elections each year. Although NLRB elections are held only in bargaining units where a union has been organizing and believes it has a chance to win, unions only win about half the elections. But that isn't really a clear reflection of employee sentiment. Because unions win more elections in small bargaining units and lose more in larger units, far fewer than half the employees voting in these elections vote for union representation.

Labor unions and politicians dependent on union political power favor neutrality agreements and card-check elections, and there is little wonder why. By limiting employees' access to important information and then denying them the vote, unions are far more likely to gain certification and the power and dues that go with it.

Anyone genuinely concerned about the interests of working Americans will reject these practices as the insult and injustice they are. □

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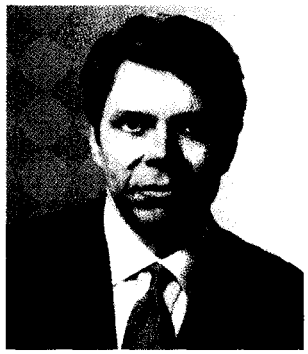
APRIL 2003



Possibilities vs. Reality

You are visiting a museum, admiring a marble statue of Julius Caesar. Suddenly, you're shocked to see his arm and hand extend outward toward you and wave. You rightly suspect that the statue is not really marble at all—that it is a machine more appropriately displayed in an amusement park's haunted house than in a museum.

But don't jump to conclusions. It is in fact *possible* that the molecules which form Caesar's statue will arrange themselves such that the arm and hand reach out and wave.

Possible, but not likely.

The range of events that are *possible* is vastly larger than the range of events that are even remotely likely. In fact, almost everything that is possible will never happen. Recognizing this important fact is crucial when evaluating proposals for government action.

For example, it is possible that a firm which slashes its prices will, by doing so, bankrupt all of its rivals and also scare off all potential future rivals. As a result, this firm would secure monopoly power and use it to enhance profits at the expense of consumers. A further possibility is that a wise and well-intentioned government could take steps that would protect consumers from this possible monopoly—either by prohibiting the price-cutting or by breaking up the firm once it achieves monopoly power.

Likewise, it is possible that a new industry that promises enormous economic benefit in the future will today be bankrupted by competition from foreign firms—and possible that astute and upright politicians can enhance their citizens' wealth by protecting this new industry from foreign competitors.

Also, it is possible that an incredibly wise (or incredibly lucky) government of an industrialized nation can provide financial aid to governments of developing countries and watch as that aid is prudently used to make the citizens of that developing country freer, wealthier and, as a result, less hostile to Western commercial values.

And, to pick a final example, it's possible that if each American is not forced to contribute a portion of his or her income to the Social Security Administration that millions of us will put too little aside for retirement, or invest our retirement funds foolishly.

Economic journals and textbooks swell with elaborate theoretical models portraying these possibilities. The nature of modern economic research is such that a premium is put on the discovery of remote, esoteric possibilities. The logical and formal structures of the models that prove these possibilities are valued far more than exercises of judgment necessary to reveal the significance (or insignificance) of these models.

Auburn University economist Roger Garrison calls this unfortunate state of things "the morbid miasma of maniacal model mongering." Its worst consequence is that it validates, by the authority of Ph.D.-possessing college professors, widespread government obstruction of the voluntary

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choices of private persons. And it does so without taking account of the costs (in resources and in human freedom) of such interventions.

Precisely because almost anything is possible, possibility is far too lenient a standard by which to judge the merits of public-policy proposals. If every undesirable *possible* occurrence justified government intervention, then—because the range of the possible is colossal—we'd exist in a totalitarian hell, tormented at every moment and every turn by some prohibition or command aimed at protecting us from exceedingly improbable occurrences.

Sadly, too many people have forgotten the truth that government is a human institution. Government officials can see the future no more clearly than can employees of Westinghouse or Wal-Mart. Nor do politicians and civil servants possess any special talent for judging for others which risks are worth taking and which are worth avoiding.

Therefore, government ought to be governed by rules that confine its role to protecting citizens from only those ills that experience shows to be sufficiently likely in the absence of government action. Moreover, the ways in which government should be permitted to act ought to be only those ways that experience shows are unlikely to encourage government to use its powers illegitimately.

Protection from Physical Coercion

In my view, the proper scope of government action consists, at most, of protecting its citizens from physical coercion initiated by others. Not only is it possible, it is likely that some people will seek to harm or to confiscate the persons or property of others. It is also likely that sanctions against such destructive action will reduce its frequency. No elaborate formal models are required to prove that the initiation of coercion against innocent people is both likely and harmful enough to justify public policies to guard against it.

But too much of what government now does—such as policing against price-cutting or running a national pension system—is justified only by showing that such government intervention *might possibly* generate net benefits. The likelihood, however, of the actual existence of any of the problems supposedly addressed by these policies is infinitesimal. Therefore, there's no good reason to empower government to police against these problems that are merely *possible*.

A great irony is that the same theoreticians who rush to recommend government intervention to prevent every *possible* problem resulting from freedom are inexplicably blind to the very real problems that, experience shows, result from government intervention. For example, while reality offers no examples of price-cutting leading to consumer harm, it does offer numerous examples of consumers harmed by firms using predatory-pricing statutes as shields against vigorous competition.

Economist Deirdre McCloskey calls this curious obsession "the Samuelsonian Vice"—after Paul Samuelson, the economist who led the way in elevating formal abstractions over real-world experience and understanding. As McCloskey explains, "The Samuelsonian Vice is staying always in a world of theory, spending an academic career imagining alternative worlds in which the sea is boiling hot and pigs have wings."

If I may be allowed a bit of self-congratulation, the most distinguishing feature of my colleagues at George Mason University's department of economics is their tenacious insistence that economics must be about reality and not about blackboard models or textbook theories. And when economics teaching and scholarship are done with reality foremost in mind, one unsurprising result is ever-deeper appreciation of the remarkable properties of free markets. □

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CAPITAL LETTERS

Free Martha?

To the Editor:

I was surprised to read January's "Perspective" on Martha Stewart. If she lied when she said "she had a standing order to sell the stock if the price went below $60.00," and that statement was made in the context of a criminal investigation, she could be guilty of obstruction of justice, whether or not the statement was made under oath. That offense may be unrelated to the SEC's insider trading charge against her, which is a civil charge. Furthermore, the following statement in my opinion is way off base: "When the government, wielding unjust statutes, invades your privacy by asking why you sold something you own, do you owe it the truth?" You do not owe the government an answer, unless you are under oath and do not plead the Fifth—you can say that you decline to answer. But there is certainly no justification for a bald lie.

—GEORGE ROWE, JR.
Irvington-on-Hudson

To the Editor:

I commend Sheldon Richman for his remarks in support of Martha Stewart. It seems to me that a widespread call for repeal of the insider trading law is in order. How can we single out one group of people, stamp "insider" on their foreheads, and have a special law that applies to them and no one else? Shouldn't the law apply to everyone?

Since Martha Stewart isn't really an insider, maybe the SEC is planning to apply the law to everyone. Many market advisory services monitor insider-trading activity and use it to indicate likely stock price movement. I fail to see how these people (me included) are any less guilty than Martha. Guilty, that is, of trading stock based on the best available information. I thought that was supposed to be a good thing.

—DAN FERNANDES
by e-mail

Who or What Creates Prosperity?

To the Editor:

Please allow me to quibble with one word in Donald Boudreaux's otherwise excellent column in the January issue of *Ideas on Liberty* ["Technology in Perspective"]. Near the end of the first page he stated that freedom "creates" prosperity. I stress to my students that freedom "allows" prosperity. Free people do the creating. An outside force does not impose prosperity on them. This difference in emphasis is, to me, significant.

—ROGER CLITES
Milligan College, Tennessee

Don Boudreaux replies:

I agree with Roger Clites that freedom allows people to create prosperity. It does not by itself—as if it were an independent, volitional force—create prosperity. My column in the November 2002 issue, "The Wrecking Ball and the Prosperity Tower," emphasizes this point. Thanks to Mr. Clites for pointing out my careless wording.

We will print the most interesting and provocative letters we receive regarding articles in *Ideas on Liberty* and the issues they raise. Brevity is encouraged; longer letters may be edited because of space limitations. Address your letters to: *Ideas on Liberty*, FEE, 30 S. Broadway, Irvington-on-Hudson, NY 10533; e-mail: iol@fee.org; fax: 914-591-8910.

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BOOKS

Guns and Violence: The English Experience

by Joyce Lee Malcolm

Harvard University Press • 2002 • 352 pages • $28.00

Reviewed by Clayton Cramer

Joyce Lee Malcolm's new book is not the masterpiece that her previous book, *To Keep and Bear Arms: The Origins of an Anglo-American Right,* was. Still, there is much to commend, and much to be learned from it.

Malcolm's strongest work here is her examination of the legal history of the right to keep and bear arms, the transformation of English law concerning the use of deadly force, and how British society has changed from supporting that right to actively opposing it. Not that many decades ago, gun ownership enjoyed widespread support in Britain; gun control was a distinctly minority position.

In 1893 the government proposed limiting ownership of handguns "less than fifteen inches long," ostensibly to reduce gun accidents. Members of Parliament pointed out that the government's own figures showed there simply wasn't a serious problem, and objected that the bill "attacked the natural right of everybody who desired to arm himself for his own protection. . . ." Two years later, a revised form of the bill, again motivated by gun accidents, received an even more ferocious scolding. MP Hopwood condemned its "disregard of individual liberty." MP Moulton criticized "interfering with such a large number of people" in the hopes of reducing "an accident list which amounted to something like eight or nine cases a year."

Malcolm explains that bureaucrats in the Home Office justified such a proposal because Britons were carrying pistols: "even ladies are taking to it." Indeed, and apparently frequently. London police were still unarmed in 1909, when they chased payroll robbers across the north end of London. Along the way, these unarmed Bobbies "borrowed four pistols from passersby while other armed citizens fulfilled their legal obligation and joined the chase."

Malcolm's use of historical crime statistics is less persuasive because of the scattered, incomplete, and inconsistent nature of the data. Trying to use medieval crime statistics is a task fraught with difficulty; we should admire her willingness to make the attempt, even if the results are less than satisfying.

As Malcolm shows, violence in Britain had been in decline since guns became common in the late medieval period. Even after guns became common by the fifteenth century, violence seemed to be somewhat in decline. By Victorian times, when even handguns could be, and were, purchased over the counter by any adult, murder rates had fallen to levels that would make any American big-city mayor dance with joy.

While correlation does not establish causality, Malcolm's necessarily impressionistic evidence suggests that if gun availability causes violence, it cannot be a strong factor. Only in the last few decades, as the British government has adopted the most stringent gun-control laws in the Western world, has the violence problem increased. As I was writing this review, the Manchester *Guardian* reported that regular police foot patrols now included handguns and automatic weapons.

Though I doubt that the historical crime statistics that Malcolm has compiled will persuade many people that gun control is a poor crime measure, it should still provoke discussion. At a minimum her evidence suggests that if there is a connection between gun availability and violence in Britain, it's not in the direction that gun-control advocates—and most Britons—assume. Those who would like to believe otherwise will need to respond to the evidence that Malcolm presents.

The best case that gun-control advocates can make, based on the historical crime statistics that Malcolm has gathered, is either

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that the medieval violent-crime statistics greatly exaggerate Merry Olde England's problems, or that the British government for the last two centuries has covered up 90–95 percent of modern murders. To Malcolm's credit, she points out some possible problems with the data from the last century or so, quoting the economic historian Howard Taylor that even nineteenth-century English murder statistics are suspect. Many murders may not have been reported in some jurisdictions "[b]ecause the discovery of a suspicious death and its subsequent investigation and prosecution could make a large dent in a police authority budget. . . ." It is *possible* that the apparent improvement in murder rates is far less impressive than it appears for this reason. But I think few historians or criminologists would want to claim that nineteenth-century undercounting of murders explains a two-orders-of-magnitude drop in murder rates.

The weakest part of Malcolm's book is the seventh chapter, where she writes what seems to be an excessively political argument concerning gun control and its effects on violence. I agree with her conclusions and find her arguments persuasive; they just seem out of place in an otherwise scholarly history. □

Clayton Cramer has written books about weapons regulation in America, black history, and the Civil War. His most recent book is Concealed Weapon Laws of the Early Republic: Dueling, Southern Violence, and Moral Reform *(Praeger, 1999).*

Vouchers Within Reason: A Child-Centered Approach to Education Reform

by James G. Dwyer

Cornell University Press • 2002 • 248 pages • $32.50

Reviewed by Cathy Duffy

Finally, someone on the left has presented a thoughtful rationale for why the left should favor vouchers: They can be used to push religion out of private schools and further reduce the ability of parents to inculcate their children with their values.

In *Vouchers Within Reason*, James Dwyer tells us, "The great promise of school vouchers is that they provide a mechanism for accomplishing what some states once tried to do but ultimately found required more effort and resolve than they were willing to expend—namely, to rein in the practices of the worst religious schools, whose operators and parent clients vehemently and forcefully resist involuntary imposition of regulations." An animus toward religious schooling and parental influence over their children's education resides at the heart of Dwyer's argument. Those who share his animus are likely to find his arguments compelling, and others might give them serious thought, considering his position as an assistant professor of law at the College of William and Mary and his expertise in this area evidenced by his previous book, *Religious Schools v. Children's Rights.*

One of Dwyer's contentions is that most voucher arguments on both sides have been based on adult-centered, rather than child-centered, concerns. In making his own proposal, he outlines requirements that he claims are child-centered. However, those requirements (including nonsexist teaching, rejection of at least some religious instruction, and inculcation of state-approved viewpoints) are based on his own adult belief system and "liberal," statist view. Dwyer totally misses the irony in his claim that what he advocates is child-centered rather than adult-centered, since his central concern seems the best interests of the state—which was under adult control last time I checked. He writes that "the state must ultimately decide what the interests of children, individually or collectively, are." This makes it acceptable to him to impose those beliefs on children and protect children from parental beliefs.

Dwyer believes that many parents will keep their children in religious schools no matter what, so it is up to the state to look out for children's interests by using vouchers as a mechanism to force "improvement" in the secular education provided within such

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schools. Dwyer goes so far as to say that states should be *compelled* to offer vouchers to fund a "good secular education" within private schools.

His argument rests on his curious assumption that the majority of private schools presently offer a substandard academic education. However, a recent study from the National Center for Education Statistics shows private-school students consistently and significantly outscoring their government-school counterparts in fourth, eighth, and twelfth grades. Additionally, a higher percentage of private-school students go on to college.

Dwyer uses supposed academic deficiencies as an excuse to advance government control over private schools. Voucher-receiving schools would be required to compartmentalize religious education apart from other courses, allow children to opt out of any religious activities or instruction, use tests that would force schools to teach state-approved content, and agree not to teach religious beliefs that the state deems harmful.

Since Dwyer is also concerned about "psychological harms children might incur in some schools," he suggests voucher-receiving schools might also be required to sign a pledge to avoid practices the state might deem harmful such as "confining students to individual workstations . . . , instilling intolerant and dogmatic attitudes, and threatening children's self-esteem and psychological well-being with constant reminders of their sinfulness and admonitions about the tragic consequences of not conforming to religious precepts." His argument rests on the assumption that education experts have the wisdom to determine what is good for all children, including not just academics, but also their psychological, social, and spiritual development.

Dwyer seems to view the state as the ultimate "grantor of rights"—the national "parent." He comments: "the state also bears responsibility for their [children] being in a religious school, because it is the state that gives parents the power to put them there." Following Dwyer's logic, if the state grants parents the option of enrolling their children in a private school, there should be no question about the state's right to control what goes on in private schools, whether or not it funds them.

While many of us might disagree with Dwyer's presuppositions, arguments, and conclusions, this book is important since it will likely provide the basis of a growing movement by the left to co-opt the voucher movement. Those who, like Dwyer, yearn for greater government control of private schooling will unwittingly be aided by conservative voucher advocates who will take vouchers at any price. But for people who oppose vouchers for fear that they will convert private schools into government-school look-alikes, this book is a fine exposé of how some on the left see the "reform": as the Trojan Horse that will give them power to control all schools. □

Cathy Duffy is the author of numerous books and articles on education, owner of Grove Publishing, and a member of the board of the Alliance for the Separation of School and State.

Strikebreaking and Intimidation: Mercenaries and Masculinity in Twentieth-Century America

by Stephen H. Norwood

University of North Carolina Press • 2002 • 328 pages • $19.95 paperback

Reviewed by Charles W. Baird

In this book, Stephen Norwood, professor of history at the University of Oklahoma, purports to give the reader a history of strikebreaking in the United States. His underlying assumptions are that union organizing and striking are what good people do to confront and defeat malevolent employers; that workers who choose to remain union-free are traitors to the working class; and that any forms of self-defense used by employers during labor disputes are perfidious (even fascist) acts. Strikers

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are manly, while any who would oppose them are either sniveling cowards (workers who don't go along) or despicable mercenaries hired by employers to prey on innocent unionists. Norwood's history is sometimes correct, but often badly tainted by his philosophy that individual rights must be subordinated to the supposed collective good.

Who are strikebreakers? They are workers already employed who choose not to strike, replacement workers hired by employers during strikes, and private security agencies hired to protect the private property rights of employers and to supply replacement workers during strikes. Norwood describes them as "scabs," "invaders," "Cossacks," and, his favorite, "lumpenproletarians." He never attempts to see the disputes from the perspectives of strikebreakers and employers. Strikers are always right no matter what they do and how they do it.

The title of the introduction, "The Emergence of the Anti-Labor Mercenary," is misleading. What he writes about is the anti-*union* mercenary. He treats "union" and "labor" as synonyms throughout the book because, in his mind, every worker should be sympathetic to unions. The title of the epilogue is "Anti-Unionism in America, 1945–2000," but that is a slip of the pen, for his confusion regarding non-union labor remains.

In chapter 1 Norwood tells stories of students at elite universities who, with the support of benighted professors and sinister administrators, offered to serve as replacement workers in the first third of the twentieth century. Chapter 2 is devoted to the urban transit strikes of 1900–1929. Chapter 3 laments the role of African Americans as strikebreakers even though, as Norwood admits, the unions typically excluded blacks. Chapter 4 describes the battles between unionized and union-free labor in the coal mines. Chapters 5 and 6 recount the battles in the auto industry. They're all variations on the same theme, namely, the evil of opposing the demands of union leaders, which are unquestionably just and reasonable.

Norwood laments that, except in the government sector, more and more workers have been deciding to remain union-free since the 1950s. He attributes this to a decline of masculinity, and, of course, to the evils wrought by President Reagan and his National Labor Relations Board. It is impossible for him to believe that unions are a declining industry simply because workers find them increasingly irrelevant and, perhaps even harmful to their interests.

Norwood is so pro-union that he doesn't even notice the irony. He condemns Ford Motor Company for telling its workers "not to do business with any concern—milk companies, laundries, grocers—that did not deliver in Ford cars." On the other hand, he thinks it is perfectly just for unions to have their members boycott union-free businesses.

Norwood does tell of some truly reprehensible acts taken by employers, their mercenaries, the police, and the military. Worst of all was the infamous Ludlow Massacre, April 20, 1914, in Colorado during a coal mine strike. The state militia fired on the unarmed occupants of a tent colony, not on company property, killing many unionists and sympathizers. The militia then burned the colony down, killing even more people. Such outrages create sympathy for the union movement.

But the Ludlow Massacre was not typical. Most violence during the strikes recounted by Norwood was initiated by strikers and their leaders. It was they who used violence to prevent willing replacement workers from accepting jobs from employers willing to hire them. Strikers clearly have a right to refuse to work when they find the terms offered by employers unacceptable. But they have no right to prevent others from doing the work they refuse to do. Strikers do not, contrary to Norwood, own their jobs. The rights of workers are delimited by the hiring contracts under which they become employees.

Norwood would find my perspective on strikes and strikebreakers to be just as outrageous as I find his to be. Nevertheless, I recommend this book to all who are inter-

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ested in the history of American labor disputes. Norwood tells interesting stories, and he tells them well. He just doesn't interpret most of them correctly. □

Charles Baird, a professor of economics and the director of the Smith Center for Private Enterprise Studies at California State University at Hayward, writes a quarterly column for Ideas on Liberty.

Bias: A CBS Insider Exposes How the Media Distort the News

by Bernard Goldberg

Regnery Publishing • 2002 • 232 pages • $27.95 hardcover; $13.95 HarperPerennial paperback

Reviewed by John Hood

It has all been said before, by scholars and critics with greater knowledge of the subject, in books and articles that were better written and edited, in exposés more telling and explosive. The American news media, particularly the so-called "prestige press" comprising the broadcast networks and the major New York and Washington newspapers and magazines, are filled with a pervasive left-wing bias.

And yet, former CBS newsman Bernard Goldberg's light and fluffy book, *Bias*, spent several weeks atop the *New York Times* bestseller list. Perhaps that's the ultimate irony, for as Goldberg notes, the relatively simple-minded folk who produce network news tend to treat the *Times* as a combination of a crib sheet, a daily production memo, and the Bible.

I wanted to like *Bias*. I especially looked forward to it because of the event that led to its publication. In 1996 Goldberg wrote a devastating and insightful critique of a thinly veiled CBS screed by the clueless Eric Engberg against presidential candidate Steve Forbes's flat-tax proposal. I saw the Engberg piece. It was terrible, marred not just by ignorance of basic economic issues but even a contempt for them. Goldberg's piece, which ran on the editorial page of the *Wall Street Journal*, was a refreshing admission of media culpability by someone who had spent more than a quarter of a century as a television news reporter.

That piece almost got Goldberg fired. The delicious part of the story was that CBS, which made its reputation through investigative journalism and whistleblowers on programs like *60 Minutes*, proved itself completely intolerant of anyone blowing the whistle on its own nefarious practices. (Goldberg had pursued the bias issue with his superiors for years before writing the *Journal* piece.)

Eventually, the internal pressure and damage to his career forced Goldberg to take early retirement from the network. Soon afterward he landed a book contract. The result, however, falls far short of what one might have expected. Other than filling out, at excessive length, the details of the Engberg fracas, the book adds little new to one's understanding of why the mainstream news media fail to cover politics and public policy with evenhandedness. Because I have dealt with reporters on a daily basis and grappled with these issues personally for 14 years now, perhaps I am not giving Goldberg sufficient credit for breaking the news about media bias to a wider audience. What sounds familiar to me might seem revelatory to his readers. Only, I suspect not.

Moreover, the book is a poor exercise in writing. It repeats itself; it assails the senses with italics and exclamation points; and it flogs what is often only a middling joke so much that it surrenders any pretense at humor and becomes painful. Goldberg denies early on that the book is an attempt at revenge against his CBS tormentors. "Anyone who writes a book to be vindictive is almost certainly insane," he writes. But I think any objective reader would come to the conclusion that, in addition to the substantive issues that Goldberg does address, much of his book reads a lot like an extended session of score-settling.

It's not that I don't think Goldberg has legitimate scores to settle. Furthermore, once he leaves his personal story and delves into slanted media coverage of such issues as race, working mothers, homelessness, and other issues, he's largely on solid ground.

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The prestige press does work from an ideological "script," though as Goldberg correctly points out, it doesn't reflect a conscious effort to deceive or an elaborate "liberal" conspiracy. The networks, the big newspapers, the newsweeklies—they're staffed with folks who pretty much came from the same places, went to the same schools and colleges, and share the same simpleminded, '60s-era soft leftism that leaves little room for questioning their presuppositions or weighing various points of view.

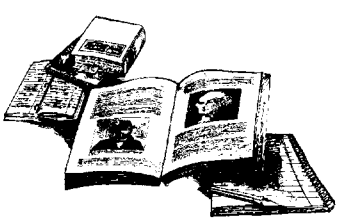
I found *Bias* disappointing precisely because it could have been so much better. Goldberg relies heavily on work that has already been published by the Media Research Center, Center on Media and Public Affairs, and other familiar sources. He supplies lengthy quotes from *Commentary* essays and *Policy Review* articles that many of us read and digested years ago.

Furthermore, *Bias* would have benefited tremendously from endnotes, an index, or at least a bibliography.

Goldberg is a veteran of *television*; I mean no disrespect, but his breezy style and lack of scholarship aren't surprising. What he needed was a good editor and a publisher's commitment to quality. What he, and his readers, got from Regnery fell short of its usual level of work.

Still, *Bias* hit the bestseller list, Goldberg received tons of coverage (thanks to the new news sources offering competition to the prestige press), and the issue of media bias and what to do about it is getting the attention it has long deserved. □

John Hood is president of the John Locke Foundation and author of Investor Politics: The New Force That Will Transform American Government, Business, and Politics in the 21st Century.



Locke, Jefferson and the Justices: Foundations and Failures of the U.S. Government

by George M. Stephens

Algora Publishing • 2002 • 224 pages • $28.95 hardcover; $21.95 paperback

Reviewed by George C. Leef

Those of us who know the philosophy of the Founders and the long trajectory of our history understand that our nation began with a strong commitment to individual liberty and has been sliding into a collectivistic, authoritarian swamp ever since. But we are a tiny minority. Most Americans know little or nothing about the beliefs of the Founders (much less the *reasons* for those beliefs) and can't imagine that Americans once lived without Social Security, minimum-wage laws, government schools, "wars" against poverty and drugs, and so on endlessly. Therefore, it is beneficial to have books that instruct readers about the limited-government concept of the Founders and how we have been steadily moving away from it.

Business consultant and economist George M. Stephens has written just that sort of book in *Locke, Jefferson and the Justices.* He gives the reader a clear exposition of the views of John Locke, then shows how Locke's philosophy influenced the American patriots in their decision to break with the British crown. Then Stephens discusses the steady descent from the pinnacle of freedom to our modern condition of almost omnipotent government, with particular emphasis on the instrumental role played by the Supreme Court. He concludes on an optimistic note, arguing that Locke's ideas on government are still just as sound now as they were when first written and that the Supreme Court has moved somewhat back toward a jurisprudence that protects Lockean rights.

To begin with, Locke forcefully argued that the purpose of government was nothing more than the protection of property. "The great and chief end, therefore, of men's unit-

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ing into commonwealths, and putting themselves under government, is the preservation of their property." Locke wrote. But in constituting government with its powers of coercion, people were playing with fire. Coercion could easily be used by unscrupulous individuals who wanted to use government to run other people's lives. Locke therefore advised strong restraints on government power to prevent the shield from being used as a sword.

The American Founders had read Locke and understood that his concept of government limited to the defense of life, liberty, and property was the only one that would give every person the freedom to maximize his happiness. And they also understood that Locke was right in advising restraints on government. "To reduce the dangers," Stephens writes, "those who drafted our Constitution limited the kinds of laws government may make." The Constitution was supposed to protect the people against the misuse of power by granting Congress the authority to pass only a very limited set of laws.

The problem, Stephens observes, was that from the beginning, there were Americans who wanted to use government power for an array of purposes not authorized in the Constitution. Alexander Hamilton famously wanted an activist government and argued that the "general welfare" clause was inserted to give Congress broad discretion in spending money. Stephens points out that Hamilton made only one brief appearance at the constitutional convention, giving a speech advocating monarchy, and when that wasn't well received he left for good. Citing Hamilton as an expert on the intentions of the drafters of the Constitution is absurd, especially when Madison was in attendance throughout and took thorough notes. Madison always maintained that the general-welfare clause was inserted as a further limit on the powers expressly granted, not to give Congress carte blanche.

Serious erosion of our constitutional scheme, and thereby of the protection of individual rights, took place under the "Progressives" who sought and obtained expanded government powers for "socia causes." But the dam burst during the New Deal, when the Supreme Court abandonec protection for property rights and economic liberty. The Court, Stephens correctly points out, approved taxing, spending, and regulation that would have appalled Jefferson or Madison. One of the decisive blows was struck in *United States v. Butler*, where the Court had to decide whether the general-welfare clause gave constitutional cover for New Deal programs that did not come under any of the enumerated powers of Congress. Harking back to the Hamilton-Madison dispute over the meaning of that clause, the justices said that they were persuaded that Hamilton made the better case. Stephens notes the intellectual dishonesty in that politically driven decision.

After expounding on the damage done to the Constitution in case after case, Stephens ends optimistically. The Rehnquist Court has made some steps back toward enforcement of constitutional limits on federal power, and our author thinks decisions like *U.S. v. Lopez* may presage a return to a stricter reading of the Constitution. My own guess is that the justices will never undo the damage they have done to the protection Americans are supposed to have for life, liberty, and property. Prognostication, however, is not the main point of the book. Read it to understand what our government was supposed to be and how we went astray. □

George Leef is the book review editor of Ideas on Liberty.

The Real Lincoln: A New Look at Abraham Lincoln, His Agenda, and an Unnecessary War

by Thomas DiLorenzo

Prima Publishing • 2002 • 272 pages • $24.95

Reviewed by John Majewski

For more than 140 years, classical liberals have heatedly debated the meaning of the American Civil War. During the war itself, British classical liberals—including

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John Bright and Richard Cobden, leaders of Britain's free-trade movement—enthusiastically supported the northern war effort, arguing that the South's strong support for slavery represented a grave threat to liberty throughout the world. Many other classical liberals, including the likes of Lord Acton, interpreted the War as an unnecessary economic and political calamity that facilitated America's long journey toward a centralized, interventionist state.

Thomas J. DiLorenzo's *The Real Lincoln* attempts to add to classical-liberal scholarship of the Civil War era. DiLorenzo argues that Abraham Lincoln fought the Civil War to advance a mercantilist agenda of corporate welfare, nationalized banking, and protective tariffs. The Civil War, he argues, was unnecessary to free the slaves; the federal government might have compensated slaveholders and put an end to the institution at a fraction of the cost of a long, bloody conflict. Lincoln's embrace of centralization led him to become a "dictator" who regularly violated civil liberties and committed war crimes against southern civilians. DiLorenzo also blames Lincoln's policies for Reconstruction, which *The Real Lincoln* portrays as "a vindictive, abusive, corrupt, political racket."

The question of whether or not war was necessary to end slavery is an important, complex question that deserves careful study. *The Real Lincoln* offers a reminder of what the war cost America, both in material and ideological terms. Especially useful is DiLorenzo's critique of Lincoln's economic policies, which often favored politically powerful corporate interests at the expense of ordinary taxpayers and citizens. Many of the problems of the Gilded Age, which historians often vaguely attribute to capitalism, resulted from specific Republican policies that subsidized railroads and other corporations. The long reign of corporate welfare on the national level, DiLorenzo correctly argues, began in the Civil War era.

DiLorenzo's critique of Lincoln, though, is sometimes too shrill and tendentious, missing opportunities to explore complex questions from a classical-liberal perspective. DiLorenzo's claim that Lincoln should have pushed for compensated emancipation, for example, might very well contradict basic classical-liberal principles because it implies that slaveholders had a legitimate property right in the labor of others. Such a thought would have horrified abolitionists such as William Lloyd Garrison, who vigorously opposed such schemes. In his discussion of Reconstruction, DiLorenzo seems to dismiss the radical Republican proposal to redistribute land to slaves to compensate for generations of lost labor. As the victims of the largest and most grievous coercive transfer in American history, did not slaves deserve at least some type of compensation?

More troubling still is DiLorenzo's failure to seriously analyze the hostility of southern whites to individual liberty. DiLorenzo criticizes Lincoln's support of government subsidies to transportation companies, yet he never mentions that southern state governments spent tens of millions of dollars to build railroads and canals before the Civil War. DiLorenzo castigates Lincoln's failure to support abolitionism, but he never mentions that many white southerners aggressively defended slavery as a "positive good."

DiLorenzo attacks Lincoln for establishing an American empire, yet he ignores the strong southern support for the Mexican War, which perhaps did more to establish an American empire than any other single conflict. DiLorenzo condemns Lincoln for his unjust treatment of Indians, yet overlooks the aggressive efforts of white southerners to remove the Cherokees, which culminated in the infamous Trail of Tears. DiLorenzo takes great pains to highlight Lincoln's racism, yet his only reference to southern racism is to excuse it as a "venting of frustration" against Republican Reconstruction policies.

Southern wrongs, of course, did not excuse Lincoln's serious shortcomings. Yet any serious evaluation of Lincoln and the Civil War era must take into account the stated desire of white southerners to perpetuate slavery through a strong, central government of their own. Far from valiantly supporting limited government, Confeder-

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ates protected slavery in their constitution, established conscription, created a ruinous inflation, and instituted a form of war socialism. Failure to even mention those issues sometimes makes DiLorenzo's book seem more like a neo-Confederate defense of the South than a thoughtful consideration of complex issues.

Finally, I should note that other scholars have found that DiLorenzo has used quotations out of context. In the few cases I could examine in detail, those criticisms are correct. Such sloppiness is particularly distressing because DiLorenzo accuses other historians of ideological bias and poor scholarship.

The Real Lincoln does make important points that need to be considered in the historical evaluation of Lincoln, but the book disappoints. Readers searching for a sophisticated libertarian critique of the Civil War would do better to consult Jeffrey Hummel's more considered and scholarly analysis in *Emancipating Slaves, Enslaving Free Men: A History of the American Civil War.* □

John Majewski is associate professor of history at the University of California at Santa Barbara.

Next Month's *Ideas on Liberty:*

Our May Issue Features

Andrew Morriss on Teaching History with Dolls

Larry Schweikart on Berry Gordy Jr.'s Motown Sound

Lawrence Reed Remembers Prague Spring, 1968

. . . and much, much more.

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IDEAS ON LIBERTY
APRIL 2003

America's Anti-Free-Speech Movement

The nation's leftists, whether in academia or the news media, tout themselves as advocates of free speech. Back in 1964 it was Mario Savio, a campus leftist, who led the Free Speech Movement at University of California, Berkeley, a movement that without question played a vital role in placing American universities center stage in the flow of political ideas no matter how controversial, unpatriotic, and vulgar.

From the Nazis to the Stalinists, leftists have always supported free-speech rights, at least initially. Why? Because speech is important for the realization of leftist goals of command and control. People must be propagandized, proselytized, and convinced. However, once the leftists are in power, as they are in most universities, free speech becomes a liability and must be suppressed. This is increasingly the case on college campuses, and suppression of speech even finds its way into the workplace.

West Virginia University's student handbook reads in part: "Individuals or organizations may utilize designated free speech areas on a first-come, first-served basis without making reservations. . . . [T]he two designated areas for free speech and assembly will be the amphitheater area of the Mountainlair plaza and the concrete stage area in front of the Mountainlair and adjacent to the WVU Bookstore." In other words, 99 percent of West Virginia's campus was made into a censorship zone.

This Nazi-Stalinist-like policy did not last long. The Philadelphia-based Foundation for Individual Rights in Education (FIRE) began a campaign of public exposure, and the Charlottesville, Virginia-based Rutherford Institute brought suit. This persuaded West Virginia University's Board of Governors to promulgate a new policy that abolishes censorship zones saying, "Assemblies of persons may occur on any grounds on the campus outside of buildings." While censorship zones have been eliminated at West Virginia University, they continue to exist at Appalachia State University, Florida State University, Illinois State, the University of Texas (Austin), and the University of Houston, and about 15 other universities across the country.

According to the *Washington Post* last November 21, Harvard Law School is considering a ban on offensive speech. Members of its Black Law Students Association want what they call "a discriminatory harassment policy that would basically punish or at least give the administration some way to review harassing behavior." Harvard's Committee on Healthy Diversity—made up of six faculty members, six students, and three law-school staff members—will make its recommendations in the spring. It may be that Harvard's black law students, like so many other students, have come to believe that they have a constitutional right not to be offended or have their feelings hurt.

Walter Williams is the John M. Olin Distinguished Professor of Economics at George Mason University in Fairfax, Virginia.

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Universities that have been trying to quash free speech have encountered some court reversals. But campus leftists have not given up. The newest university gambit to limit speech mirrors Equal Employment Opportunity Commission guidelines concerning sexual harassment in the workplace (creating a hostile environment), or they attempt to base their speech code on the "fighting words" doctrine enunciated by the U.S. Supreme Court in *Chaplinsky v. New Hampshire* (1942).

Communist-Style Re-Education

In addition to limitations on free speech, some universities have communist-style re-education practices. For example, at the University of North Carolina-Chapel Hill, incoming freshmen were required to read *Approaching the Qur'an: The Early Revelations*. According to Chancellor James Moeser, the book was "chosen in the wake of September 11th," which was a "great opportunity to have a conversation on the teachings of one of the world's great religions." Can one imagine the furor if students had to read books about Christianity?

At Vanderbilt University, its Confederate Memorial Hall dormitory was renamed Memorial Hall because the word "Confederate" makes some people feel uncomfortable. Vanderbilt Professor Jonathan Farley wrote in an article that Confederates were "cowards masquerading as civilized men" and that "every Confederate soldier deserved not a hallowed resting place at the end of his days but a reservation at the end of the gallows." One can imagine the indignation if such a statement were made about other combatants in U.S. history: Indians, Mexicans, or Japanese.

Attacks on free speech in order to accommodate multiculturalism and diversity are really an attack on Western values, which the university "enlightened" consider, at best, morally equivalent to other values. But Western values are superior to all others. Why? The indispensable achievement of the West was the concept of individual rights. It is the idea that individuals have certain inalienable rights, that individuals do not exist to serve government, but government exists to protect inalienable rights. It took until the seventeenth century for that idea to arrive on the scene, mostly through the works of English philosophers such as John Locke and, later, David Hume.

While Western values are superior to all others, one need not be a Westerner to hold them. A person can be Chinese, Japanese, Israeli, African, or Arab and hold Western values. It's no accident that the Western values of reason and individual rights have produced unprecedented health, life expectancy, wealth, and comfort for the ordinary person. There's an indisputable positive relationship between liberty and living standards.

Western values are by no means secure. They are under ruthless attack by the academic elite on college campuses across America. These people want to replace personal liberty with government control; they want to replace equality with entitlement; they want to halt progress in the name of protecting the environment. As such they pose a much greater threat to our way of life than any terrorist or rogue nation. Multiculturalism and diversity are a cancer on our society, and ironically, with our tax dollars and charitable donations to universities, we're feeding it. □

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